

**Government Code § 6103;  
appearance fees not required**

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## SUPERIOR COURT OF THE STATE OF CALIFORNIA

### COUNTY OF LOS ANGELES

OMAR RODRIGUEZ; CINDY GUILLEN-  
GOMEZ; STEVE KARAGIOSIAN; ELFEGO  
RODRIGUEZ; AND JAMAL CHILDS,

Plaintiffs,

vs.

BURBANK POLICE DEPARTMENT; CITY  
OF BURBANK. AND DOES 1 THROUGH  
100, INCLUSIVE,

Defendants.

CASE NO. BC 414602

*[Assigned to Hon. Joanne O'Donnell, Dept. 37]*

*[Discovery Referee: Hon. Diane Wayne, Ret.]*

#### **DEFENDANT'S SEPARATE STATEMENT IN OPPOSITION TO PLAINTIFF STEVE KARAGIOSIAN'S MOTION TO COMPEL FURTHER RESPONSES TO DOCUMENT REQUESTS [ETC.]**

Date: March 11, 2010  
Time: 10:00 a.m.

Action Filed: May 28, 2009  
Trial Date: July 6, 2010

Defendant CITY OF BURBANK, including the Police Department of the City of Burbank (collectively "Defendant"), hereby submits the following Separate Statement in Opposition to Plaintiff Steve Karagiosian's ("Plaintiff's" or "Karagiosian's") Motion to Compel Further Responses to Document Requests, or, in the Alternative, for an Order Precluding Defendant From

Offering Evidence Relating to the Individuals who are the Subjects of the Requests.

**SEPARATE STATEMENT OF ITEMS IN DISPUTE**

**REQUEST FOR PRODUCTION NO. 1**

**Text of Plaintiff's Request:**

"Copies of any and all DOCUMENTS, WRITINGS, and/or RECORDS that RELATE TO, refer to, describe, or pertain to Oscar Aguilera, the individual depicted in the photograph identified as Exhibit 120 at PLAINTIFF's deposition, and attached hereto as Exhibit A, including without limitation, but not limited to, photographs, video and/or audio (booking or otherwise); reports, follow-up investigations, use of force investigation reports; tactical and training analysis reports; report(s) or recommendation(s) given by the Department Training Officer or Department personnel as a result of said investigation/arrests; notes; inmate booking folder information; booking slips; evidence log; detail (SED) daily log; detail (SED/property bureau) monthly statistical log documentation of injuries sustained by the officer(s) involved in the arrest; City property damage reports involving said investigation/arrests; administrative investigations and interviews as a result of said investigation/arrests; hospital records or EMT/paramedic reports; documentation of discipline administered as a result of said investigation/arrests; documentation of awards or commendations received as a result of said investigation/arrests; field interview cards; informant file including VR (vice report); intelligence reports and/or reports documented under a silent DR.; court documentation involving said investigation/arrests including pitches [sic] motion information; Department or City government memorandums involved with said investigation/arrests; Department or City government emails, faxes and/or electronic communications involved with said investigation/arrests within YOUR custody or control."

**Text of Defendant's Response:**

"Defendant objects to the Request on grounds that it is overbroad, boilerplate, shotgun and seeks disclosure of law enforcement investigative records, police personnel records, confidential personal information, internal affairs investigations, confidential medical information and highly sensitive criminal offender records in violation of Penal Code §§ 832.7(a), 841.5 and 964; Government Code §§ 6254(f), 6255 and 13300 et seq., Evidence Code §§ 1040 and 1043, and the constitutional privacy rights of Aguilera, officers involved in his arrest and others. Further, Plaintiff has asserted the Fifth Amendment in response to questions about the arrest of this individual and refused to provide any testimony about it. Plaintiff's contention that information regarding the arrest is privileged must be recognized in connection with his own request for such information. *Hartbrodt v. Burke* (1996) 42 Cal.App.4th 168, 174-75; *Fremont Indemnity v. Superior Court* (1982) 137 Cal.App.3d 554, 560.

"Further, Defendant objects because it is informed and believes that records regarding the arrest of this individual are the subject of a U.S. Department of Justice investigation and production of these documents to Plaintiff would interfere with that investigation and obstruct justice."

**Plaintiff's Reasons for Compelling Production:**

After having introduced the booking photographs of the nine individuals as exhibits during Karagiosian's deposition, and having asked Karagiosian several questions about each individual, Defendant should not be allowed to now stand behind a claim of privacy. A party may not use a

1 discovery privilege as a sword and a shield. A party is prohibited from introducing evidence at trial  
2 if the evidence was withheld during discovery. *Dwyer v. Crocker National Bank* (1987) 194  
3 Cal.App.3d 1418, 1432; *A&M Records Inc. v. Heilman* (1977) 75 Cal.App.3d 554, 566; *In re*  
4 *Marriage of Hoffmeister* (1984) 161 Cal.App.3d 1163, 1171.

5 Thus, Defendant should either be ordered to produce the documents, or it should be  
6 precluded from offering any evidence during trial, or in any summary judgment motion, regarding  
7 the individuals about which Defendant questioned Karagiosian during his deposition.

8 **Defendant's Reasons for Opposing Compelled Production:**

9 1. Plaintiff does not even address, let alone satisfy, the threshold requirement that his  
10 motion "set forth *specific facts showing good cause* justifying the discovery sought by the  
11 demand." (Code Civ. Proc., § 2031.310(b)(1), emphasis added.) It was Plaintiff's affirmative  
12 burden "*to provide evidence* from which [this Court] may determine" that the requested discovery  
13 "... either is itself admissible in evidence or appears reasonably calculated to lead to the discovery  
14 of admissible evidence." (*Calcor Space Facility, Inc. v. Superior Court* (1997) 53 Cal.App.4th 216,  
15 223, emphasis added, quoting former Code Civ. Proc. § 2017(a) [now § 2017.010].) Plaintiff's  
16 separate statement neglects to mention that *Plaintiff refused to provide substantive answers as to*  
17 *any arrestee who he recalled taking into custody*, including Aguilera, and instead objected based  
18 on the Fifth Amendment privilege against self-incrimination and other grounds. (Cischke Decl.,  
19 Exh. A, pp. 425:22-433:24.) Plaintiff offers *no legal support* for suggesting that his requests are  
20 justified simply by Defendant's deposition questioning and use of booking photos during the  
21 deposition. Instead, Plaintiff's deposition answers – and refusals to answer, which are the subject of  
22 a Motion to Compel Plaintiff to Answer Deposition Questions, filed by Defendant on February 25,  
23 2010 – show that Plaintiff has *no factual basis* to conclude that any documents regarding the nine  
24 arrestees are relevant or calculated to lead to admissible evidence. This is particularly true given the  
25 vast scope of documents Plaintiff seeks. His "blanket demand" hardly constitutes the "reasonable"  
26 particularity" required under section 2017.210. (*Calcor, supra*, 53 Cal.App.4th at p. 222.)

27 2. "Records of complaints to, or investigations conducted by, ... any state or local  
28 police agency, ... or any investigatory or security files compiled by any other state or local agency

1 for correctional, law enforcement, or licensing purposes,” such as those Plaintiff seeks herein, are  
2 **exempt from disclosure** under the California Public Records Act (“CPRA”). (Gov. Code, §  
3 6254(f).) Furthermore, an agency “shall justify withholding any record by demonstrating that the  
4 record in question is exempt under express provisions of this chapter or that on the facts of the  
5 particular case the public interest served by not disclosing the record clearly outweighs the public  
6 interest served by disclosure of the record.” (Gov. Code, § 6255(a).) This exemption encompasses  
7 “investigations undertaken for the purpose of determining whether a violation of law may occur or  
8 has occurred. If a violation or potential violation is detected, the exemption also extends to records  
9 of investigations conducted for the purpose of uncovering information surrounding the commission  
10 of the violation and its agency.” (*Haynie v. Superior Court* (2001) 26 Cal.4th 1061, 1071.)

11 3. Evidence Code section 1040 provides in pertinent part as follows:

12 “(a) As used in this section, ‘official information’ means information  
13 acquired in confidence by a public employee in the course of his or her duty and not  
14 open, or officially disclosed, to the public prior to the time the claim of privilege is  
15 made.

16 “(b) A public entity has a privilege to refuse to disclose official  
17 information, and to prevent another from disclosing official information, if the  
18 privilege is claimed by a person authorized by the public entity to do so and:

19 “(1) Disclosure is forbidden by an act of the Congress of the United States  
20 or a statute of this state; or

21 “(2) Disclosure of the information is against the public interest because  
22 there is a necessity for preserving the confidentiality of the information that  
23 outweighs the necessity for disclosure in the interest of justice; but no privilege may  
24 be claimed under this paragraph if any person authorized to do so has consented that  
25 the information be disclosed in the proceeding. In determining whether disclosure of  
26 the information is against the public interest, the interest of the public entity as a  
27 party in the outcome of the proceeding may not be considered.”

28 Here, disclosure of “any and all” documents pertaining to the arrestees is not only forbidden  
under the specific statutes discussed herein, but also would be “against the public interest” in  
preserving the confidentiality of ongoing law enforcement investigations, as recognized in *Haynie*.

4. Penal Code section 841.5(a) provides that absent specific exceptions not applicable  
here, “no law enforcement officer or employee of a law enforcement agency shall disclose to any  
arrested person, or to any person who may be a defendant in a criminal action, **the address or  
telephone number of any person who is a victim or witness in the alleged offense.**” (Emphasis

1 added. See also Pen. Code, § 964 [directing in each county the establishment of “a mutually  
2 agreeable procedure to protect confidential personal information regarding any witness or victim  
3 contained in a police report, arrest report, or investigative report”].) Plaintiff does not, and cannot,  
4 dispute that his requests are broad enough to include documentation of the addresses and telephone  
5 numbers of the nine arrestees, who plainly qualify as “witness[es] in the alleged offense[s].”

6         5. Penal Code section 13300 addresses disclosure of “‘local summary criminal history  
7 information’ ... pertaining to the identification and criminal history of any person, such as name,  
8 date of birth, physical description, dates of arrests, arresting agencies and booking numbers,  
9 charges, dispositions, and similar data about the person.” (Pen. Code, § 13300(a)(1).) This statute  
10 provides that a local law enforcement agency “shall furnish local summary criminal history  
11 information to any” of 16 specified categories of entities or persons. ***Parties to civil lawsuits are not***  
12 ***among these specified categories.*** (Pen. Code, § 13300(b)(1)-(16).) This statute also provides “that  
13 when information is furnished to assist an agency, officer, or official of state or local government, a  
14 public utility, or any entity, in fulfilling employment, certification, or licensing duties, Chapter 1321  
15 of the Statutes of 1974 and Section 432.7 of the Labor Code shall apply.” (Pen. Code, § 13300(b).)  
16 Labor Code section 432.7(a) prohibits employers from asking job applicants to disclose any  
17 “information concerning an arrest or detention that did not result in conviction, or information  
18 concerning a referral to, and participation in, any pretrial or posttrial diversion program,” and  
19 prohibits such information from being sought or utilized as a factor in any employment decision.  
20 Penal Code section 13300 and Labor Code section 432.7 thus further underscore the confidential  
21 and sensitive nature of documents and other information pertaining to ongoing law enforcement  
22 investigations.

23         6. Plaintiff fails to address, let alone satisfy, the mandatory prerequisites for obtaining  
24 production of police officer personnel documents, which he explicitly requests. (*Pitchess v.*  
25 *Superior Court* (1974) 11 Cal.3d 531; Pen. Code, § 832.7(a); Evid. Code, § 1043 et seq.) “[T]he  
26 specific Evidence Code procedures relating to discovery of peace officer personnel records take  
27 precedence over the general discovery rules outlined in the Code of Civil Procedure.” (*County of*  
28 *Los Angeles v. Superior Court (Uhley)* (1990) 219 Cal.App.3d 1605, 1611.) Showing “good cause”

1 for production “is only the first hurdle” on a *Pitchess* motion; the court still must thereafter review  
2 any potentially relevant records in chambers, balancing the interests in discovery against each  
3 officer’s right to confidentiality. (*City of Santa Cruz v. Municipal Court* (1989) 49 Cal.3d 74, 84.)  
4 In particular, peace officer “personnel records” (see Pen. Code, § 832.8), “or information obtained  
5 from these records, are confidential and shall not be disclosed in any criminal or civil proceeding  
6 except by discovery pursuant to Sections 1043 and 1046 of the Evidence Code,” or except in the  
7 context of certain investigations or proceedings conducted by a grand jury, the District Attorney or  
8 the Attorney General. (Pen. Code, § 832.7(a).) A *Pitchess* motion “shall” be accompanied by,  
9 among other things, “[a]ffidavits showing good cause for the discovery or disclosure sought, setting  
10 forth the materiality thereof to the subject matter involved in the pending litigation ....” (Evid. Code,  
11 § 1043(b)(3), emphasis added.) The declaration of Plaintiff’s counsel does not purport to show that  
12 the requested discovery is “material” to the subject matter of this case.

13         7. Plaintiff’s “alternative” request for evidence sanctions is strictly prohibited. Instead,  
14 on an initial motion to compel such as Plaintiff’s, a court may only “impose a monetary sanction”  
15 against the losing party, unless that party “acted with substantial justification or that other  
16 circumstances make the imposition of the sanction unjust.” (Code Civ. Proc., § 2031.310(h).)  
17 ***Plaintiff does not seek a monetary sanction and does not accuse Defendant of acting without***  
18 ***substantial justification.*** Only “if a party fails to obey an order compelling further response” may  
19 the court impose “an evidence sanction” or such other “orders that are just.” (Code Civ. Proc., §  
20 2031.310(i); accord, *Kravitz v. Superior Court* (2001) 91 Cal.App.4th 1015, 1021 [“issue, evidence,  
21 and terminating sanctions must all be preceded by the abuser’s disobedience of an order compelling  
22 him to do that which he should have done in the first instance”].) The cases cited by Plaintiff  
23 (*Dwyer*, *A&M Records* and *Hoffmeister*) do not, and could not, hold otherwise. None of those cases  
24 discussed the language in Section 2031.310(h) and (i) prohibiting the imposition of evidence  
25 sanctions unless and until a party has violated a court order compelling discovery. Instead, all three  
26 cases discussed orders precluding a party from “introducing evidence at trial or by motion to  
27 support or oppose designated claims or defenses to which [his] refusal to answer questions or  
28 produce documents whether by invoking [the] Fifth Amendment privilege or otherwise [related].”

(Dwyer, *supra*, 194 Cal.App.3d at p. 1432.) The Fifth Amendment context is qualitatively different than other situations because “*a court may not issue an order compelling incriminating testimony*,” and therefore “would be rendered powerless to deal with the situation” unless it could preemptively preclude evidence relating to the invocation of the privilege. (*A&M Records, supra*, 75 Cal.App.3d at p. 567, fn. 8, emphasis added.) Outside the Fifth Amendment context, Section 2031.310 clearly precludes Plaintiff from obtaining any evidence sanction before obtaining an order compelling production of the requested documents.

## **REQUEST FOR PRODUCTION NO. 2**

### **Text of Plaintiff’s Request:**

“Copies of any and all DOCUMENTS, WRITINGS, and/or RECORDS that RELATE TO, refer to, describe, or pertain to Oscar Aguilera, the individual depicted in the photograph identified as Exhibit 121 at PLAINTIFF’s deposition, and attached hereto as Exhibit B, including without limitation, but no limited to, City property damage reports involving said investigation/arrests; administrative investigations and interviews as a result of said investigation/arrests; hospital records or EMT/paramedic reports; documentation of discipline administered as a result of said investigation/arrests; documentation of awards or commendations received as a result of said investigation/arrests; field interview cards; informant file including VR (vice report); intelligence reports and/or reports documented under a silent DR.; court documentation involving said investigation/arrests including pitches motion information; Department or City government memorandums involved with said investigation/arrests; Department or City government emails, faxes and/or electronic communications involved with said investigation/arrests within YOUR custody or control.”

### **Text of Defendant’s Response:**

“Defendant objects to the Request on grounds that it is overbroad, boilerplate, shotgun and seeks disclosure of law enforcement investigative records, police personnel records, confidential personal information, internal affairs investigations, confidential medical information and highly sensitive criminal offender records in violation of Penal Code §§ 832.7(a), 841.5 and 964; Government Code §§ 6254(f), 6255 and 13300 et seq., Evidence Code §§ 1040 and 1043, and the constitutional privacy rights of Aguilera, officers involved in his arrest and others. Further, Plaintiff has asserted the Fifth Amendment in response to questions about the arrest of this individual and refused to provide any testimony about it. Plaintiff’s contention that information regarding the arrest is privileged must be recognized in connection with his own request for such information. *Hartbrodt v. Burke* (1996) 42 Cal.App.4th 168, 174-75; *Fremont Indemnity v. Superior Court* (1982) 137 Cal.App.3d 554, 560. Further, Defendant objects because it is informed and believes that records regarding the arrest of this individual are the subject of a U.S. Department of Justice investigation and production of these documents to Plaintiff would interfere with that investigation and obstruct justice. Defendant further responds that the Request is entirely duplicative of Request No. 1.”

**Plaintiff's Reasons for Compelling Production:**

After having introduced the booking photographs of the nine individuals as exhibits during Karagiosian's deposition, and having asked Karagiosian several questions about each individual, Defendant should not be allowed to now stand behind a claim of privacy. A party may not use a discovery privilege as a sword and a shield. A party is prohibited from introducing evidence at trial if the evidence was withheld during discovery. *Dwyer v. Crocker National Bank* (1987) 194 Cal.App.3d 1418, 1432; *A&M Records Inc. v. Heilman* (1977) 75 Cal.App.3d 554, 566; *In re Marriage of Hoffmeister* (1984) 161 Cal.App.3d 1163, 1171.

Thus, Defendant should either be ordered to produce the documents, or it should be precluded from offering any evidence during trial, or in any summary judgment motion, regarding the individuals about which Defendant questioned Karagiosian during his deposition.

**Defendant's Reasons for Opposing Compelled Production:**

These reasons are summarized below, and are set forth at greater length in connection with Request No. 1, above, which is essentially identical to this Request and all others.

1. Plaintiff does not even address, let alone satisfy, the threshold requirement that his motion "set forth specific facts showing good cause justifying the discovery sought by the demand." (Code Civ. Proc., § 2031.310(b)(1).) It was Plaintiff's affirmative burden "to provide evidence from which [this Court] may determine" that the requested discovery "... either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence." (*Calcor, supra*, 53 Cal.App.4th at p. 223; see Code Civ. Proc., § 2017.010.) Plaintiff refused to provide substantive answers as to any arrestee who he recalled taking into custody, including Aguilera, and instead objected based on the Fifth Amendment privilege against self-incrimination and other grounds. (Cischke Decl., Exh. A, pp. 425:22-433:24.) Plaintiff's deposition answers – and refusals to answer – show that he has ***no factual basis*** to conclude that any documents regarding the nine arrestees are either relevant or calculated to lead to admissible evidence. This is particularly true given the vast scope of documents Plaintiff seeks. His "blanket demand" hardly constitutes "reasonable" particularity." (*Calcor, supra*, 53 Cal.App.4th at p. 222.)

2. "Records of complaints to, or investigations conducted by, ... any state or local



1 police agency, ... or any investigatory or security files compiled by any other state or local agency  
2 for correctional, law enforcement, or licensing purposes,” such as those Plaintiff seeks herein, are  
3 *exempt from disclosure* under the CPRA. (Gov. Code, § 6254(f).) Furthermore, an agency “shall  
4 justify withholding any record by demonstrating that the record in question is exempt under express  
5 provisions of this chapter or that on the facts of the particular case the public interest served by not  
6 disclosing the record clearly outweighs the public interest served by disclosure of the record.” (Gov.  
7 Code, § 6255(a).) This exemption encompasses “investigations undertaken for the purpose of  
8 determining whether a violation of law may occur or has occurred. If a violation or potential  
9 violation is detected, the exemption also extends to records of investigations conducted for the  
10 purpose of uncovering information surrounding the commission of the violation and its agency.”  
11 (*Haynie, supra*, 26 Cal.4th at p. 1071.)

12 3. Disclosure of “official information” in the arrestees’ files is privileged from  
13 disclosure under Evidence Code section 1040, because such disclosure is: (a) forbidden by the  
14 specific statutes discussed herein; and (b) would be “against the public interest” in preserving the  
15 confidentiality of ongoing law enforcement investigations, as recognized in *Haynie*.

16 4. Penal Code section 841.5(a) provides that absent specific exceptions not applicable  
17 here, “no law enforcement officer or employee of a law enforcement agency shall disclose to any  
18 arrested person, or to any person who may be a defendant in a criminal action, the address or  
19 telephone number of any person who is a victim or witness in the alleged offense.” Plaintiff’s  
20 requests are broad enough to include documentation of the addresses and telephone numbers of the  
21 nine arrestees, who plainly qualify as “witness[es] in the alleged offense[s].”

22 5. Penal Code section 13300 addresses disclosure of “‘local summary criminal history  
23 information’ ... pertaining to the identification and criminal history of any person, such as name,  
24 date of birth, physical description, dates of arrests, arresting agencies and booking numbers,  
25 charges, dispositions, and similar data about the person.” (Pen. Code, § 13300(a)(1).) This statute  
26 provides that a local law enforcement agency “shall furnish local summary criminal history  
27 information to any” of 16 specified categories of entities or persons. ***Parties to civil lawsuits are not***  
28 ***among these specified categories.*** (Pen. Code, § 13300(b)(1)-(16).) This statute also refers to Labor

Code section 432.7(a), which prohibits employers from asking job applicants to disclose any “information concerning an arrest or detention that did not result in conviction, or information concerning a referral to, and participation in, any pretrial or posttrial diversion program,” and prohibits such information from being sought or utilized as a factor in any employment decision. These statutes further underscore the confidential and sensitive nature of documents and other information pertaining to ongoing law enforcement investigations.

6. Plaintiff fails to address, let alone satisfy, the mandatory prerequisites for obtaining production of police officer personnel documents under *Pitchess* and the statutes that codify that decision (Pen. Code, § 832.7(a), and Evid. Code, § 1043 et seq.) In particular, peace officer “personnel records” (see Pen. Code, § 832.8), “or information obtained from these records, are confidential and shall not be disclosed in any ... civil proceeding except by discovery pursuant to Sections 1043 and 1046 of the Evidence Code.” (Pen. Code, § 832.7(a).) A *Pitchess* motion “shall” be accompanied by, among other things, “[a]ffidavits showing good cause for the discovery or disclosure sought, setting forth the materiality thereof to the subject matter involved in the pending litigation ....” (Evid. Code, § 1043(b)(3), emphasis added.) The declaration of Plaintiff’s counsel does not purport to show that the requested discovery is “material” to the subject matter of this case.

7. Plaintiff’s “alternative” request for evidence sanctions is strictly prohibited. Instead, on an initial motion to compel such as Plaintiff’s, a court may only “impose a monetary sanction” against the losing party, unless that party “acted with substantial justification or that other circumstances make the imposition of the sanction unjust.” (Code Civ. Proc., § 2031.310(h).) Only “if a party fails to obey an order compelling further response” may the court impose “an evidence sanction” or such other “orders that are just.” (Code Civ. Proc., § 2031.310(i); accord, *Kravitz*, *supra*, 91 Cal.App.4th at p. 1021.)

### **REQUEST FOR PRODUCTION NO. 3**

#### **Text of Plaintiff’s Request**

“Copies of any and all DOCUMENTS, WRITINGS, and/or RECORDS that RELATE TO, refer to, describe, or pertain to Jesse Aguirre, the individual depicted in the photograph identified as Exhibit 120 at PLAINTIFF’s deposition, and attached hereto as Exhibit B, including without limitation, but not limited to, photographs, video and/or audio (booking or otherwise); reports, follow-up investigations, use of force investigation reports; tactical and training analysis reports; report(s) or

1 recommendation(s) given by the Department Training Officer or Department  
2 personnel as a result of said investigation/arrests; notes; inmate booking folder  
3 information; booking slips; evidence log; detail (SED) daily log; detail  
4 (SED/property bureau) monthly statistical log documentation of injuries sustained by  
5 the officer(s) involved in the arrest; City property damage reports involving said  
6 investigation/arrests; administrative investigations and interviews as a result of said  
7 investigation/arrests; hospital records or EMT/paramedic reports; documentation of  
8 discipline administered as a result of said investigation/arrests; documentation of  
9 awards or commendations received as a result of said investigation/arrests; field  
10 interview cards; informant file including VR (vice report); intelligence reports and/or  
11 reports documented under a silent DR.; court documentation involving said  
12 investigation/arrests including pitches (sic) motion information; Department or City  
13 government memorandums involved with said investigation/arrests; Department or  
14 City government emails, faxes and/or electronic communications involved with said  
15 investigation/arrests within YOUR custody or control.”

16 **Text of Defendant’s Response:**

17 “Defendant objects to the Request on grounds that it is overbroad, boilerplate,  
18 shotgun and seeks disclosure of law enforcement investigative records, police  
19 personnel records, confidential personal information, internal affairs investigations,  
20 confidential medical information and highly sensitive criminal offender records in  
21 violation of Penal Code §§ 832.7(a), 841.5 and 964; Government Code §§ 6254(f),  
22 6255 and 13300 et seq., Evidence Code §§ 1040 and 1043, and the constitutional  
23 privacy rights of Aguierre, officers involved in his arrest and others. Further,  
24 Plaintiff has asserted the Fifth Amendment in response to questions about the arrest  
25 of this individual and refused to provide any testimony about it. Plaintiff’s contention  
26 that information regarding the arrest is privileged must be recognized in connection  
27 with his own request for such information. *Hartbrodt v. Burke* (1996) 42  
28 Cal.App.4th 168, 174-75; *Fremont Indemnity v. Superior Court* (1982) 137  
Cal.App.3d 554, 560. Further, Defendant objects because it is informed and believes  
that records regarding the arrest of this individual are the subject of a U.S.  
Department of Justice investigation and production of these documents to Plaintiff  
would interfere with that investigation and obstruct justice.”

**Plaintiff’s Reasons for Compelling Production:**

After having introduced the booking photographs of the nine individuals as exhibits during  
Karagiosian’s deposition, and having asked Karagiosian several questions about each individual,  
Defendant should not be allowed to now stand behind a claim of privacy. A party may not use a  
discovery privilege as a sword and a shield. A party is prohibited from introducing evidence at trial  
if the evidence was withheld during discovery. *Dwyer v. Crocker National Bank* (1987) 194  
Cal.App.3d 1418, 1432; *A&M Records Inc. v. Heilman* (1977) 75 Cal.App.3d 554, 566; *In re*  
*Marriage of Hoffmeister* (1984) 161 Cal.App.3d 1163, 1171.

Thus, Defendant should either be ordered to produce the documents, or it should be  
precluded from offering any evidence during trial, or in any summary judgment motion, regarding  
the individuals about which Defendant questioned Karagiosian during his deposition.

**Defendant's Reasons for Opposing Compelled Production:**

These reasons are summarized below, and are set forth at greater length in connection with Request No. 1, above, which is essentially identical to this Request and all others.

1. Plaintiff does not even address, let alone satisfy, the threshold requirement that his motion "set forth specific facts showing good cause justifying the discovery sought by the demand." (Code Civ. Proc., § 2031.310(b)(1).) It was Plaintiff's affirmative burden "to provide evidence from which [this Court] may determine" that the requested discovery "... either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence." (*Calcor*, *supra*, 53 Cal.App.4th at p. 223; see Code Civ. Proc., § 2017.010.) Plaintiff denied knowing of any involvement in Aguirre's arrest or how his apparent injury came about. (Cischke Decl., Exh. A, pp. 433:25-435:17.) Plaintiff's deposition answers show that he has ***no factual basis*** to conclude that any documents regarding this arrestee are either relevant or calculated to lead to admissible evidence. This is particularly true given the vast scope of documents Plaintiff seeks. His "blanket demand" hardly constitutes "'reasonable' particularity." (*Calcor*, *supra*, 53 Cal.App.4th at p. 222.)

2. "Records of complaints to, or investigations conducted by, ... any state or local police agency, ... or any investigatory or security files compiled by any other state or local agency for correctional, law enforcement, or licensing purposes," such as those Plaintiff seeks herein, are ***exempt from disclosure*** under the CPRA. (Gov. Code, § 6254(f).) Furthermore, an agency "shall justify withholding any record by demonstrating that the record in question is exempt under express provisions of this chapter or that on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record." (Gov. Code, § 6255(a).) This exemption encompasses "investigations undertaken for the purpose of determining whether a violation of law may occur or has occurred. If a violation or potential violation is detected, the exemption also extends to records of investigations conducted for the purpose of uncovering information surrounding the commission of the violation and its agency." (*Haynie*, *supra*, 26 Cal.4th at p. 1071.)

3. Disclosure of "official information" in the arrestees' files is privileged from

1 disclosure under Evidence Code section 1040, because such disclosure is: (a) forbidden by the  
2 specific statutes discussed herein; and (b) would be “against the public interest” in preserving the  
3 confidentiality of ongoing law enforcement investigations, as recognized in *Haynie*.

4         4. Penal Code section 841.5(a) provides that absent specific exceptions not applicable  
5 here, “no law enforcement officer or employee of a law enforcement agency shall disclose to any  
6 arrested person, or to any person who may be a defendant in a criminal action, the address or  
7 telephone number of any person who is a victim or witness in the alleged offense.” Plaintiff’s  
8 requests are broad enough to include documentation of the addresses and telephone numbers of the  
9 nine arrestees, who plainly qualify as “witness[es] in the alleged offense[s].”

10         5. Penal Code section 13300 addresses disclosure of “‘local summary criminal history  
11 information’ ... pertaining to the identification and criminal history of any person, such as name,  
12 date of birth, physical description, dates of arrests, arresting agencies and booking numbers,  
13 charges, dispositions, and similar data about the person.” (Pen. Code, § 13300(a)(1).) This statute  
14 provides that a local law enforcement agency “shall furnish local summary criminal history  
15 information to any” of 16 specified categories of entities or persons. ***Parties to civil lawsuits are not***  
16 ***among these specified categories.*** (Pen. Code, § 13300(b)(1)-(16).) This statute also refers to Labor  
17 Code section 432.7(a), which prohibits employers from asking job applicants to disclose any  
18 “information concerning an arrest or detention that did not result in conviction, or information  
19 concerning a referral to, and participation in, any pretrial or posttrial diversion program,” and  
20 prohibits such information from being sought or utilized as a factor in any employment decision.  
21 These statutes further underscore the confidential and sensitive nature of documents and other  
22 information pertaining to ongoing law enforcement investigations.

23         6. Plaintiff fails to address, let alone satisfy, the mandatory prerequisites for obtaining  
24 production of police officer personnel documents under *Pitchess* and the statutes that codify that  
25 decision (Pen. Code, § 832.7(a), and Evid. Code, § 1043 et seq.) In particular, peace officer  
26 “personnel records” (see Pen. Code, § 832.8), “or information obtained from these records, are  
27 confidential and shall not be disclosed in any ... civil proceeding except by discovery pursuant to  
28 Sections 1043 and 1046 of the Evidence Code.” (Pen. Code, § 832.7(a).) A *Pitchess* motion “shall”

1 be accompanied by, among other things, “[a]ffidavits showing good cause for the discovery or  
2 disclosure sought, setting forth the materiality thereof to the subject matter involved in the pending  
3 litigation ...” (Evid. Code, § 1043(b)(3), emphasis added.) The declaration of Plaintiff’s counsel  
4 does not purport to show that the requested discovery is “material” to the subject matter of this case.

5 7. Plaintiff’s “alternative” request for evidence sanctions is strictly prohibited. Instead,  
6 on an initial motion to compel such as Plaintiff’s, a court may only “impose a monetary sanction”  
7 against the losing party, unless that party “acted with substantial justification or that other  
8 circumstances make the imposition of the sanction unjust.” (Code Civ. Proc., § 2031.310(h).) Only  
9 “if a party fails to obey an order compelling further response” may the court impose “an evidence  
10 sanction” or such other “orders that are just.” (Code Civ. Proc., § 2031.310(i); accord, *Kravitz*,  
11 *supra*, 91 Cal.App.4th at p. 1021.)

#### 12 **REQUEST FOR PRODUCTION NO. 4**

##### 13 **Text of Plaintiff’s Request:**

14 “Copies of any and all DOCUMENTS, WRITINGS, and/or RECORDS that  
15 RELATE TO, refer to, describe, or pertain to Jesse Aguirre, the individual depicted  
16 in the photograph identified as Exhibit 121 at PLAINTIFF’s deposition, and attached  
17 hereto as Exhibit B, including without limitation, but no limited to, City property  
18 damage reports involving said investigation/arrests; administrative investigations and  
19 interviews as a result of said investigation/arrests; hospital records or  
20 EMT/paramedic reports; documentation of discipline administered as a result of said  
21 investigation/arrests; documentation of awards or commendations received as a  
22 result of said investigation/arrests; field interview cards; informant file including VR  
23 (vice report); intelligence reports and/or reports documented under a silent DR.;  
24 court documentation involving said investigation/arrests including pitches motion  
25 information; Department or City government memorandums involved with said  
26 investigation/arrests; Department or City government emails, faxes and/or electronic  
27 communications involved with said investigation/arrests within YOUR custody or  
28 control.”

##### 22 **Text of Defendant’s Response:**

23 “Defendant objects to the Request on grounds that it is overbroad, boilerplate,  
24 shotgun and seeks disclosure of law enforcement investigative records, police  
25 personnel records, confidential personal information, internal affairs investigations,  
26 confidential medical information and highly sensitive criminal offender records in  
27 violation of Penal Code §§ 832.7(a), 841.5 and 964; Government Code §§ 6254(f),  
28 6255 and 13300 et seq., Evidence Code §§ 1040 and 1043, and the constitutional  
privacy rights of Aguirre, officers involved in his arrest and others. Further, Plaintiff  
has asserted the Fifth Amendment in response to questions about the arrest of this  
individual and refused to provide any testimony about it. Plaintiff’s contention that  
information regarding the arrest is privileged must be recognized in connection with  
his own request for such information. *Hartbrodt v. Burke* (1996) 42 Cal.App.4th 168,  
174-75; *Fremont Indemnity v. Superior Court* (1982) 137 Cal.App.3d 554, 560.

1 Further, Defendant objects because it is informed and believes that records regarding  
2 the arrest of this individual are the subject of a U.S. Department of Justice  
3 investigation and production of these documents to Plaintiff would interfere with that  
4 investigation and obstruct justice. Moreover, Plaintiff testified the he does not know  
5 who Mr. Aguirre is and/or was not involved in his arrest, thus the documents sought  
6 are not reasonably calculated to lead to information relevant to the subject matter of  
7 this litigation. Defendant further responds that the Request is entirely duplicative of  
8 Request No. 3.”

9  
10 **Plaintiff’s Reasons for Compelling Production:**

11 After having introduced the booking photographs of the nine individuals as exhibits during  
12 Karagiosian’s deposition, and having asked Karagiosian several questions about each individual,  
13 Defendant should not be allowed to now stand behind a claim of privacy. A party may not use a  
14 discovery privilege as a sword and a shield. A party is prohibited from introducing evidence at trial  
15 if the evidence was withheld during discovery. *Dwyer v. Crocker National Bank* (1987) 194  
16 Cal.App.3d 1418, 1432; *A&M Records Inc. v. Heilman* (1977) 75 Cal.App.3d 554, 566; *In re*  
17 *Marriage of Hoffmeister* (1984) 161 Cal.App.3d 1163, 1171.

18 Thus, Defendant should either be ordered to produce the documents, or it should be  
19 precluded from offering any evidence during trial, or in any summary judgment motion, regarding  
20 the individuals about which Defendant questioned Karagiosian during his deposition.

21 **Defendant’s Reasons for Opposing Compelled Production:**

22 These reasons are summarized below, and are set forth at greater length in connection with  
23 Request No. 1, above, which is essentially identical to this Request and all others.

24 1. Plaintiff does not even address, let alone satisfy, the threshold requirement that his  
25 motion “set forth specific facts showing good cause justifying the discovery sought by the demand.”  
26 (Code Civ. Proc., § 2031.310(b)(1).) It was Plaintiff’s affirmative burden “to provide evidence from  
27 which [this Court] may determine” that the requested discovery “... either is itself admissible in  
28 evidence or appears reasonably calculated to lead to the discovery of admissible evidence.”  
(*Calcor, supra*, 53 Cal.App.4th at p. 223; see Code Civ. Proc., § 2017.010.) Plaintiff denied  
knowing of any involvement in Aguirre’s arrest or how his apparent injury came about. (Cischke  
Decl., Exh. A, pp. 433:25-435:17.) Plaintiff’s deposition answers show that he has ***no factual basis***  
to conclude that any documents regarding this arrestee are either relevant or calculated to lead to

1 admissible evidence. This is particularly true given the vast scope of documents Plaintiff seeks. His  
2 “blanket demand” hardly constitutes “‘reasonable’ particularity.” (*Calcor, supra*, 53 Cal.App.4th at  
3 p. 222.)

4 2. “Records of complaints to, or investigations conducted by, ... any state or local  
5 police agency, ... or any investigatory or security files compiled by any other state or local agency  
6 for correctional, law enforcement, or licensing purposes,” such as those Plaintiff seeks herein, are  
7 **exempt from disclosure** under the CPRA. (Gov. Code, § 6254(f).) Furthermore, an agency “shall  
8 justify withholding any record by demonstrating that the record in question is exempt under express  
9 provisions of this chapter or that on the facts of the particular case the public interest served by not  
10 disclosing the record clearly outweighs the public interest served by disclosure of the record.” (Gov.  
11 Code, § 6255(a).) This exemption encompasses “investigations undertaken for the purpose of  
12 determining whether a violation of law may occur or has occurred. If a violation or potential  
13 violation is detected, the exemption also extends to records of investigations conducted for the  
14 purpose of uncovering information surrounding the commission of the violation and its agency.”  
15 (*Haynie, supra*, 26 Cal.4th at p. 1071.)

16 3. Disclosure of “official information” in the arrestees’ files is privileged from  
17 disclosure under Evidence Code section 1040, because such disclosure is: (a) forbidden by the  
18 specific statutes discussed herein; and (b) would be “against the public interest” in preserving the  
19 confidentiality of ongoing law enforcement investigations, as recognized in *Haynie*.

20 4. Penal Code section 841.5(a) provides that absent specific exceptions not applicable  
21 here, “no law enforcement officer or employee of a law enforcement agency shall disclose to any  
22 arrested person, or to any person who may be a defendant in a criminal action, the address or  
23 telephone number of any person who is a victim or witness in the alleged offense.” Plaintiff’s  
24 requests are broad enough to include documentation of the addresses and telephone numbers of the  
25 nine arrestees, who plainly qualify as “witness[es] in the alleged offense[s].”

26 5. Penal Code section 13300 addresses disclosure of “‘local summary criminal history  
27 information’ ... pertaining to the identification and criminal history of any person, such as name,  
28 date of birth, physical description, dates of arrests, arresting agencies and booking numbers,



1 charges, dispositions, and similar data about the person.” (Pen. Code, § 13300(a)(1).) This statute  
2 provides that a local law enforcement agency “shall furnish local summary criminal history  
3 information to any” of 16 specified categories of entities or persons. ***Parties to civil lawsuits are not***  
4 ***among these specified categories.*** (Pen. Code, § 13300(b)(1)-(16).) This statute also refers to Labor  
5 Code section 432.7(a), which prohibits employers from asking job applicants to disclose any  
6 “information concerning an arrest or detention that did not result in conviction, or information  
7 concerning a referral to, and participation in, any pretrial or posttrial diversion program,” and  
8 prohibits such information from being sought or utilized as a factor in any employment decision.  
9 These statutes further underscore the confidential and sensitive nature of documents and other  
10 information pertaining to ongoing law enforcement investigations.

11         6. Plaintiff fails to address, let alone satisfy, the mandatory prerequisites for obtaining  
12 production of police officer personnel documents under *Pitchess* and the statutes that codify that  
13 decision (Pen. Code, § 832.7(a), and Evid. Code, § 1043 et seq.) In particular, peace officer  
14 “personnel records” (see Pen. Code, § 832.8), “or information obtained from these records, are  
15 confidential and shall not be disclosed in any ... civil proceeding except by discovery pursuant to  
16 Sections 1043 and 1046 of the Evidence Code.” (Pen. Code, § 832.7(a).) A *Pitchess* motion “shall”  
17 be accompanied by, among other things, “[a]ffidavits showing good cause for the discovery or  
18 disclosure sought, setting forth the materiality thereof to the subject matter involved in the pending  
19 litigation ....” (Evid. Code, § 1043(b)(3), emphasis added.) The declaration of Plaintiff’s counsel  
20 does not purport to show that the requested discovery is “material” to the subject matter of this case.

21         7. Plaintiff’s “alternative” request for evidence sanctions is strictly prohibited. Instead,  
22 on an initial motion to compel such as Plaintiff’s, a court may only “impose a monetary sanction”  
23 against the losing party, unless that party “acted with substantial justification or that other  
24 circumstances make the imposition of the sanction unjust.” (Code Civ. Proc., § 2031.310(h).) Only  
25 “if a party fails to obey an order compelling further response” may the court impose “an evidence  
26 sanction” or such other “orders that are just.” (Code Civ. Proc., § 2031.310(i); accord, *Kravitz*,  
27 *supra*, 91 Cal.App.4th at p. 1021.)

28 ///

**REQUEST FOR PRODUCTION NO. 5**

**Text of Plaintiff's Request:**

"Copies of any and all DOCUMENTS, WRITINGS, and/or RECORDS that RELATE TO, refer to, describe, or pertain to Lucio Estrada, the individual depicted in the photograph identified as Exhibit 121 at PLAINTIFF's deposition, and attached hereto as Exhibit C, including without limitation, but not limited to, photographs, video and/or audio (booking or otherwise); reports, follow-up investigations, use of force investigation reports; tactical and training analysis reports; report(s) or recommendation(s) given by the Department Training Officer or Department personnel as a result of said investigation/arrests; notes; inmate booking folder information; booking slips; evidence log; detail (SED) daily log; detail (SED/property bureau) monthly statistical log documentation of injuries sustained by the officer(s) involved in the arrest; City property damage reports involving said investigation arrests; administrative investigations and interviews as a result of said investigation/arrests; hospital records or EMT/paramedic reports; documentation of discipline administered as a result of said investigation/arrests; documentation of awards or commendations received as a result of said investigation/arrests; field interview cards; informant file including VR (vice report); intelligence reports and/or reports documented under a silent DR.; court documentation involving said investigation/arrests including pitches motion information; Department or City government memorandums involved with said investigation/arrests; Department or City government emails, faxes and/or electronic communications involved with said investigation/arrests within YOUR custody or control."

**Text of Defendant's Response:**

"Defendant objects to the Request on grounds that it is overbroad, boilerplate, shotgun and seeks disclosure of law enforcement investigative records, police personnel records, confidential personal information, internal affairs investigations, confidential medical information and highly sensitive criminal offender records in violation of Penal Code §§ 832.7(a), 841.5 and 964; Government Code §§ 6254(f), 6255 and 13300 et seq., Evidence Code §§ 1040 and 1043, and the constitutional privacy rights of Estrada, officers involved in his arrest and others. Further, Plaintiff has asserted the Fifth Amendment in response to questions about the arrest of this individual and refused to provide any testimony about it. Plaintiff's contention that information regarding the arrest is privileged must be recognized in connection with his own request for such information. *Hartbrodt v. Burke* (1996) 42 Cal.App.4th 168, 174-75; *Fremont Indemnity v. Superior Court* (1982) 137 Cal.App.3d 554, 560. Further, Defendant objects because it is informed and believes that records regarding the arrest of this individual are the subject of a U.S. Department of Justice investigation and production of these documents to Plaintiff would interfere with that investigation and obstruct justice. Moreover, Plaintiff testified the he does not know who Mr. Aguirre is and/or was not involved in his arrest, thus the documents sought are not reasonably calculated to lead to information relevant to the subject matter of this litigation."

**Plaintiff's Reasons for Compelling Production:**

After having introduced the booking photographs of the nine individuals as exhibits during Karagiosian's deposition, and having asked Karagiosian several questions about each individual, Defendant should not be allowed to now stand behind a claim of privacy. A party may not use a

1 discovery privilege as a sword and a shield. A party is prohibited from introducing evidence at trial  
2 if the evidence was withheld during discovery. *Dwyer v. Crocker National Bank* (1987) 194  
3 Cal.App.3d 1418, 1432; *A&M Records Inc. v. Heilman* (1977) 75 Cal.App.3d 554, 566; *In re*  
4 *Marriage of Hoffmeister* (1984) 161 Cal.App.3d 1163, 1171.

5 Thus, Defendant should either be ordered to produce the documents, or it should be  
6 precluded from offering any evidence during trial, or in any summary judgment motion, regarding  
7 the individuals about which Defendant questioned Karagiosian during his deposition.

8 **Defendant's Reasons for Opposing Compelled Production:**

9 These reasons are summarized below, and are set forth at greater length in connection with  
10 Request No. 1, above, which is essentially identical to this Request and all others.

11 1. Plaintiff does not even address, let alone satisfy, the threshold requirement that his  
12 motion "set forth specific facts showing good cause justifying the discovery sought by the demand."  
13 (Code Civ. Proc., § 2031.310(b)(1).) It was Plaintiff's affirmative burden "to provide evidence from  
14 which [this Court] may determine" that the requested discovery "... either is itself admissible in  
15 evidence or appears reasonably calculated to lead to the discovery of admissible evidence."  
16 (*Calcor, supra*, 53 Cal.App.4th at p. 223; see Code Civ. Proc., § 2017.010.) Plaintiff denied  
17 knowing of any involvement in taking Estrada into custody or how his apparent injury came about.  
18 (Cischke Decl., Exh. A, pp. 435:18-437:2.) Plaintiff's deposition answers show that he has ***no***  
19 ***factual basis*** to conclude that any documents regarding this arrestee are either relevant or calculated  
20 to lead to admissible evidence. This is particularly true given the vast scope of documents Plaintiff  
21 seeks. His "blanket demand" hardly constitutes "'reasonable' particularity." (*Calcor, supra*, 53  
22 Cal.App.4th at p. 222.)

23 2. "Records of complaints to, or investigations conducted by, ... any state or local  
24 police agency, ... or any investigatory or security files compiled by any other state or local agency  
25 for correctional, law enforcement, or licensing purposes," such as those Plaintiff seeks herein, are  
26 ***exempt from disclosure*** under the CPRA. (Gov. Code, § 6254(f).) Furthermore, an agency "shall  
27 justify withholding any record by demonstrating that the record in question is exempt under express  
28 provisions of this chapter or that on the facts of the particular case the public interest served by not

1 disclosing the record clearly outweighs the public interest served by disclosure of the record.” (Gov.  
2 Code, § 6255(a).) This exemption encompasses “investigations undertaken for the purpose of  
3 determining whether a violation of law may occur or has occurred. If a violation or potential  
4 violation is detected, the exemption also extends to records of investigations conducted for the  
5 purpose of uncovering information surrounding the commission of the violation and its agency.”  
6 (*Haynie, supra*, 26 Cal.4th at p. 1071.)

7         3. Disclosure of “official information” in the arrestees’ files is privileged from  
8 disclosure under Evidence Code section 1040, because such disclosure is: (a) forbidden by the  
9 specific statutes discussed herein; and (b) would be “against the public interest” in preserving the  
10 confidentiality of ongoing law enforcement investigations, as recognized in *Haynie*.

11         4. Penal Code section 841.5(a) provides that absent specific exceptions not applicable  
12 here, “no law enforcement officer or employee of a law enforcement agency shall disclose to any  
13 arrested person, or to any person who may be a defendant in a criminal action, the address or  
14 telephone number of any person who is a victim or witness in the alleged offense.” Plaintiff’s  
15 requests are broad enough to include documentation of the addresses and telephone numbers of the  
16 nine arrestees, who plainly qualify as “witness[es] in the alleged offense[s].”

17         5. Penal Code section 13300 addresses disclosure of “‘local summary criminal history  
18 information’ ... pertaining to the identification and criminal history of any person, such as name,  
19 date of birth, physical description, dates of arrests, arresting agencies and booking numbers,  
20 charges, dispositions, and similar data about the person.” (Pen. Code, § 13300(a)(1).) This statute  
21 provides that a local law enforcement agency “shall furnish local summary criminal history  
22 information to any” of 16 specified categories of entities or persons. ***Parties to civil lawsuits are not***  
23 ***among these specified categories.*** (Pen. Code, § 13300(b)(1)-(16).) This statute also refers to Labor  
24 Code section 432.7(a), which prohibits employers from asking job applicants to disclose any  
25 “information concerning an arrest or detention that did not result in conviction, or information  
26 concerning a referral to, and participation in, any pretrial or posttrial diversion program,” and  
27 prohibits such information from being sought or utilized as a factor in any employment decision.  
28 These statutes further underscore the confidential and sensitive nature of documents and other

1 information pertaining to ongoing law enforcement investigations.

2 6. Plaintiff fails to address, let alone satisfy, the mandatory prerequisites for obtaining  
3 production of police officer personnel documents under *Pitchess* and the statutes that codify that  
4 decision (Pen. Code, § 832.7(a), and Evid. Code, § 1043 et seq.) In particular, peace officer  
5 “personnel records” (see Pen. Code, § 832.8), “or information obtained from these records, are  
6 confidential and shall not be disclosed in any ... civil proceeding except by discovery pursuant to  
7 Sections 1043 and 1046 of the Evidence Code.” (Pen. Code, § 832.7(a).) A *Pitchess* motion “shall”  
8 be accompanied by, among other things, “[a]ffidavits showing good cause for the discovery or  
9 disclosure sought, setting forth the materiality thereof to the subject matter involved in the pending  
10 litigation ....” (Evid. Code, § 1043(b)(3), emphasis added.) The declaration of Plaintiff’s counsel  
11 does not purport to show that the requested discovery is “material” to the subject matter of this case.

12 7. Plaintiff’s “alternative” request for evidence sanctions is strictly prohibited. Instead,  
13 on an initial motion to compel such as Plaintiff’s, a court may only “impose a monetary sanction”  
14 against the losing party, unless that party “acted with substantial justification or that other  
15 circumstances make the imposition of the sanction unjust.” (Code Civ. Proc., § 2031.310(h).) Only  
16 “if a party fails to obey an order compelling further response” may the court impose “an evidence  
17 sanction” or such other “orders that are just.” (Code Civ. Proc., § 2031.310(i); accord, *Kravitz*,  
18 *supra*, 91 Cal.App.4th at p. 1021.)

19 **REQUEST FOR PRODUCTION NO. 6**

20 **Text of Plaintiff’s Request:**

21 “Copies of any and all DOCUMENTS, WRITINGS, and/or RECORDS that  
22 RELATE TO, refer to, describe, or pertain to Lucio Estrada, the individual depicted  
23 in the photograph identified as Exhibit 122 at PLAINTIFF’s deposition, and attached  
24 hereto as Exhibit C, including without limitation, but no limited to, City property  
25 damage reports involving said investigation/arrests; administrative investigations and  
26 interviews as a result of said investigation/arrests; hospital records or  
27 EMT/paramedic reports; documentation of discipline administered as a result of said  
28 investigation/arrests; documentation of awards or commendations received as a  
result of said investigation/arrests; field interview cards; informant file including VR  
(vice report); intelligence reports and/or reports documented under a silent DR.;  
court documentation involving said investigation/arrests including pitches motion  
information; Department or City government memorandums involved with said  
investigation/arrests; Department or City government emails, faxes and/or electronic  
communications involved with said investigation/arrests within YOUR custody or  
control.”

**Text of Defendant's Response:**

"Defendant objects to the Request on grounds that it is overbroad, boilerplate, shotgun and seeks disclosure of law enforcement investigative records, police personnel records, confidential personal information, internal affairs investigations, confidential medical information and highly sensitive criminal offender records in violation of Penal Code §§ 832.7(a), 841.5 and 964; Government Code §§ 6254(f), 6255 and 13300 et seq., Evidence Code §§ 1040 and 1043, and the constitutional privacy rights of Estrada, officers involved in his arrest and others. Further, Plaintiff has asserted the Fifth Amendment in response to questions about the arrest of this individual and refused to provide any testimony about it. Plaintiff's contention that information regarding the arrest is privileged must be recognized in connection with his own request for such information. *Hartbrodt v. Burke* (1996) 42 Cal.App.4th 168, 174-75; *Fremont Indemnity v. Superior Court* (1982) 137 Cal.App.3d 554, 560. Further, Defendant objects because it is informed and believes that records regarding the arrest of this individual are the subject of a U.S. Department of Justice investigation and production of these documents to Plaintiff would interfere with that investigation and obstruct justice. Moreover, Plaintiff testified the he does not know who Mr. Estrada is and/or was not involved in his arrest, thus the documents sought are not reasonably calculated to lead to information relevant to the subject matter of this litigation. Defendant further responds that the Request es entirely duplicative of Request No. 5."

**Plaintiff's Reasons for Compelling Production:**

After having introduced the booking photographs of the nine individuals as exhibits during Karagiosian's deposition, and having asked Karagosian several questions about each individual, Defendant should not be allowed to now stand behind a claim of privacy. A party may not use a discovery privilege as a sword and a shield. A party is prohibited from introducing evidence at trial if the evidence was withheld during discovery. *Dwyer v. Crocker National Bank* (1987) 194 Cal.App.3d 1418, 1432; *A&M Records Inc. v. Heilman* (1977) 75 Cal.App.3d 554, 566; *In re Marriage of Hoffmeister* (1984) 161 Cal.App.3d 1163, 1171.

Thus, Defendant should either be ordered to produce the documents, or it should be precluded from offering any evidence during trial, or in any summary judgment motion, regarding the individuals about which Defendant questioned Karagiosian during his deposition.

**Defendant's Reasons for Opposing Compelled Production:**

These reasons are summarized below, and are set forth at greater length in connection with Request No. 1, above, which is essentially identical to this Request and all others.

1. Plaintiff does not even address, let alone satisfy, the threshold requirement that his motion "set forth specific facts showing good cause justifying the discovery sought by the demand."

(Code Civ. Proc., § 2031.310(b)(1).) It was Plaintiff's affirmative burden "to provide evidence from which [this Court] may determine" that the requested discovery "... either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence." (*Calcor*, *supra*, 53 Cal.App.4th at p. 223; see Code Civ. Proc., § 2017.010.) Plaintiff denied knowing of any involvement in taking Estrada into custody or how his apparent injury came about. (Cischke Decl., Exh. A, pp. 435:18-437:2.) Plaintiff's deposition answers show that he has ***no factual basis*** to conclude that any documents regarding this arrestee are either relevant or calculated to lead to admissible evidence. This is particularly true given the vast scope of documents Plaintiff seeks. His "blanket demand" hardly constitutes "'reasonable' particularity." (*Calcor*, *supra*, 53 Cal.App.4th at p. 222.)

2. "Records of complaints to, or investigations conducted by, ... any state or local police agency, ... or any investigatory or security files compiled by any other state or local agency for correctional, law enforcement, or licensing purposes," such as those Plaintiff seeks herein, are ***exempt from disclosure*** under the CPRA. (Gov. Code, § 6254(f).) Furthermore, an agency "shall justify withholding any record by demonstrating that the record in question is exempt under express provisions of this chapter or that on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record." (Gov. Code, § 6255(a).) This exemption encompasses "investigations undertaken for the purpose of determining whether a violation of law may occur or has occurred. If a violation or potential violation is detected, the exemption also extends to records of investigations conducted for the purpose of uncovering information surrounding the commission of the violation and its agency." (*Haynie*, *supra*, 26 Cal.4th at p. 1071.)

3. Disclosure of "official information" in the arrestees' files is privileged from disclosure under Evidence Code section 1040, because such disclosure is: (a) forbidden by the specific statutes discussed herein; and (b) would be "against the public interest" in preserving the confidentiality of ongoing law enforcement investigations, as recognized in *Haynie*.

4. Penal Code section 841.5(a) provides that absent specific exceptions not applicable here, "no law enforcement officer or employee of a law enforcement agency shall disclose to any

1 arrested person, or to any person who may be a defendant in a criminal action, the address or  
2 telephone number of any person who is a victim or witness in the alleged offense.” Plaintiff’s  
3 requests are broad enough to include documentation of the addresses and telephone numbers of the  
4 nine arrestees, who plainly qualify as “witness[es] in the alleged offense[s].”

5         5. Penal Code section 13300 addresses disclosure of “‘local summary criminal history  
6 information’ ... pertaining to the identification and criminal history of any person, such as name,  
7 date of birth, physical description, dates of arrests, arresting agencies and booking numbers,  
8 charges, dispositions, and similar data about the person.” (Pen. Code, § 13300(a)(1).) This statute  
9 provides that a local law enforcement agency “shall furnish local summary criminal history  
10 information to any” of 16 specified categories of entities or persons. ***Parties to civil lawsuits are not***  
11 ***among these specified categories.*** (Pen. Code, § 13300(b)(1)-(16).) This statute also refers to Labor  
12 Code section 432.7(a), which prohibits employers from asking job applicants to disclose any  
13 “information concerning an arrest or detention that did not result in conviction, or information  
14 concerning a referral to, and participation in, any pretrial or posttrial diversion program,” and  
15 prohibits such information from being sought or utilized as a factor in any employment decision.  
16 These statutes further underscore the confidential and sensitive nature of documents and other  
17 information pertaining to ongoing law enforcement investigations.

18         6. Plaintiff fails to address, let alone satisfy, the mandatory prerequisites for obtaining  
19 production of police officer personnel documents under *Pitchess* and the statutes that codify that  
20 decision (Pen. Code, § 832.7(a), and Evid. Code, § 1043 et seq.) In particular, peace officer  
21 “personnel records” (see Pen. Code, § 832.8), “or information obtained from these records, are  
22 confidential and shall not be disclosed in any ... civil proceeding except by discovery pursuant to  
23 Sections 1043 and 1046 of the Evidence Code.” (Pen. Code, § 832.7(a).) A *Pitchess* motion “shall”  
24 be accompanied by, among other things, “[a]ffidavits showing good cause for the discovery or  
25 disclosure sought, setting forth the materiality thereof to the subject matter involved in the pending  
26 litigation ...” (Evid. Code, § 1043(b)(3), emphasis added.) The declaration of Plaintiff’s counsel  
27 does not purport to show that the requested discovery is “material” to the subject matter of this case.

28         7. Plaintiff’s “alternative” request for evidence sanctions is strictly prohibited. Instead,



on an initial motion to compel such as Plaintiff's, a court may only "impose a monetary sanction" against the losing party, unless that party "acted with substantial justification or that other circumstances make the imposition of the sanction unjust." (Code Civ. Proc., § 2031.310(h).) Only "if a party fails to obey an order compelling further response" may the court impose "an evidence sanction" or such other "orders that are just." (Code Civ. Proc., § 2031.310(i); accord, *Kravitz*, *supra*, 91 Cal.App.4th at p. 1021.)

#### **REQUEST FOR PRODUCTION NO. 7**

##### **Text of Plaintiff's Request:**

"Copies of any and all DOCUMENTS, WRITINGS, and/or RECORDS that RELATE TO, refer to, describe, or pertain to Jens Bryan Majano, the individual depicted in the photograph identified as Exhibit 122 at PLAINTIFF's deposition, and attached hereto as Exhibit D, including without limitation, but not limited to, photographs, video and/or audio (booking or otherwise); reports, follow-up investigations, use of force investigation reports; tactical and training analysis reports; report(s) or recommendation(s) given by the Department Training Officer or Department personnel as a result of said investigation/arrests; notes; inmate booking folder information; booking slips; evidence log; detail (SED) daily log; detail (SED/property bureau) monthly statistical log documentation of injuries sustained by the officer(s) involved in the arrest; City property damage reports involving said investigation arrests; administrative investigations and interviews as a result of said investigation/arrests; hospital records or EMT/paramedic reports; documentation of discipline administered as a result of said investigation/arrests; documentation of awards or commendations received as a result of said investigation/arrests; field interview cards; informant file including VR (vice report); intelligence reports and/or reports documented under a silent DR.; court documentation involving said investigation/arrests including pitches motion information; Department or City government memorandums involved with said investigation/arrests; Department or City government emails, faxes and/or electronic communications involved with said investigation/arrests within YOUR custody or control."

##### **Text of Defendant's Response:**

"Defendant objects to the Request on grounds that it is overbroad, boilerplate, shotgun and seeks disclosure of law enforcement investigative records, police personnel records, confidential personal information, internal affairs investigations, confidential medical information and highly sensitive criminal offender records in violation of Penal Code §§ 832.7(a), 841.5 and 964; Government Code §§ 6254(f), 6255 and 13300 et seq., Evidence Code §§ 1040 and 1043, and the constitutional privacy rights of Majano, officers involved in his arrest and others. Further, Plaintiff has asserted the Fifth Amendment in response to questions about the arrest of this individual and refused to provide any testimony about it. Plaintiff's contention that information regarding the arrest is privileged must be recognized in connection with his own request for such information. *Hartbrodt v. Burke* (1996) 42 Cal.App.4th 168, 174-75; *Fremont Indemnity v. Superior Court* (1982) 137 Cal.App.3d 554, 560. Further, Defendant objects because it is informed and believes that records regarding the arrest of this individual are the subject of a U.S. Department of Justice investigation and production of these documents to Plaintiff would interfere with that

1 investigation and obstruct justice. Moreover, Plaintiff testified the he does not know  
2 who Mr. Majano is and/or was not involved in his arrest, thus the documents sought  
3 are not reasonably calculated to lead to information relevant to the subject matter of  
4 this litigation. Defendant further objects that the Request is duplicative.”

4 **Plaintiff's Reasons for Compelling Production:**

5 After having introduced the booking photographs of the nine individuals as exhibits during  
6 Karagiosian's deposition, and having asked Karagiosian several questions about each individual,  
7 Defendant should not be allowed to now stand behind a claim of privacy. A party may not use a  
8 discovery privilege as a sword and a shield. A party is prohibited from introducing evidence at trial  
9 if the evidence was withheld during discovery. *Dwyer v. Crocker National Bank* (1987) 194  
10 Cal.App.3d 1418, 1432; *A&M Records Inc. v. Heilman* (1977) 75 Cal.App.3d 554, 566; *In re*  
11 *Marriage of Hoffmeister* (1984) 161 Cal.App.3d 1163, 1171.

12 Thus, Defendant should either be ordered to produce the documents, or it should be  
13 precluded from offering any evidence during trial, or in any summary judgment motion, regarding  
14 the individuals about which Defendant questioned Karagiosian during his deposition.

15 **Defendant's Reasons for Opposing Compelled Production:**

16 These reasons are summarized below, and are set forth at greater length in connection with  
17 Request No. 1, above, which is essentially identical to this Request and all others.

18 1. Plaintiff does not even address, let alone satisfy, the threshold requirement that his  
19 motion “set forth specific facts showing good cause justifying the discovery sought by the demand.”  
20 (Code Civ. Proc., § 2031.310(b)(1).) It was Plaintiff's affirmative burden “to provide evidence from  
21 which [this Court] may determine” that the requested discovery “... either is itself admissible in  
22 evidence or appears reasonably calculated to lead to the discovery of admissible evidence.”  
23 (*Calcor, supra*, 53 Cal.App.4th at p. 223; see Code Civ. Proc., § 2017.010.) Plaintiff denied being  
24 involved in taking Majano into custody or knowing about use of force against him (Cischke Decl.,  
25 Exh. A, pp. 437:3-439:3.) Plaintiff's deposition answers show that he has ***no factual basis*** to  
26 conclude that any documents regarding this arrestee are either relevant or calculated to lead to  
27 admissible evidence. This is particularly true given the vast scope of documents Plaintiff seeks. His  
28 “blanket demand” hardly constitutes “‘reasonable’ particularity.” (*Calcor, supra*, 53 Cal.App.4th at

1 p. 222.)

2 2. "Records of complaints to, or investigations conducted by, ... any state or local  
3 police agency, ... or any investigatory or security files compiled by any other state or local agency  
4 for correctional, law enforcement, or licensing purposes," such as those Plaintiff seeks herein, are  
5 ***exempt from disclosure*** under the CPRA. (Gov. Code, § 6254(f).) Furthermore, an agency "shall  
6 justify withholding any record by demonstrating that the record in question is exempt under express  
7 provisions of this chapter or that on the facts of the particular case the public interest served by not  
8 disclosing the record clearly outweighs the public interest served by disclosure of the record." (Gov.  
9 Code, § 6255(a).) This exemption encompasses "investigations undertaken for the purpose of  
10 determining whether a violation of law may occur or has occurred. If a violation or potential  
11 violation is detected, the exemption also extends to records of investigations conducted for the  
12 purpose of uncovering information surrounding the commission of the violation and its agency."  
13 (*Haynie, supra*, 26 Cal.4th at p. 1071.)

14 3. Disclosure of "official information" in the arrestees' files is privileged from  
15 disclosure under Evidence Code section 1040, because such disclosure is: (a) forbidden by the  
16 specific statutes discussed herein; and (b) would be "against the public interest" in preserving the  
17 confidentiality of ongoing law enforcement investigations, as recognized in *Haynie*.

18 4. Penal Code section 841.5(a) provides that absent specific exceptions not applicable  
19 here, "no law enforcement officer or employee of a law enforcement agency shall disclose to any  
20 arrested person, or to any person who may be a defendant in a criminal action, the address or  
21 telephone number of any person who is a victim or witness in the alleged offense." Plaintiff's  
22 requests are broad enough to include documentation of the addresses and telephone numbers of the  
23 nine arrestees, who plainly qualify as "witness[es] in the alleged offense[s]."

24 5. Penal Code section 13300 addresses disclosure of "'local summary criminal history  
25 information' ... pertaining to the identification and criminal history of any person, such as name,  
26 date of birth, physical description, dates of arrests, arresting agencies and booking numbers,  
27 charges, dispositions, and similar data about the person." (Pen. Code, § 13300(a)(1).) This statute  
28 provides that a local law enforcement agency "shall furnish local summary criminal history

1 information to any” of 16 specified categories of entities or persons. *Parties to civil lawsuits are not*  
2 *among these specified categories.* (Pen. Code, § 13300(b)(1)-(16).) This statute also refers to Labor  
3 Code section 432.7(a), which prohibits employers from asking job applicants to disclose any  
4 “information concerning an arrest or detention that did not result in conviction, or information  
5 concerning a referral to, and participation in, any pretrial or posttrial diversion program,” and  
6 prohibits such information from being sought or utilized as a factor in any employment decision.  
7 These statutes further underscore the confidential and sensitive nature of documents and other  
8 information pertaining to ongoing law enforcement investigations.

9         6. Plaintiff fails to address, let alone satisfy, the mandatory prerequisites for obtaining  
10 production of police officer personnel documents under *Pitchess* and the statutes that codify that  
11 decision (Pen. Code, § 832.7(a), and Evid. Code, § 1043 et seq.) In particular, peace officer  
12 “personnel records” (see Pen. Code, § 832.8), “or information obtained from these records, are  
13 confidential and shall not be disclosed in any ... civil proceeding except by discovery pursuant to  
14 Sections 1043 and 1046 of the Evidence Code.” (Pen. Code, § 832.7(a).) A *Pitchess* motion “shall”  
15 be accompanied by, among other things, “[a]ffidavits showing good cause for the discovery or  
16 disclosure sought, setting forth the materiality thereof to the subject matter involved in the pending  
17 litigation ....” (Evid. Code, § 1043(b)(3), emphasis added.) The declaration of Plaintiff’s counsel  
18 does not purport to show that the requested discovery is “material” to the subject matter of this case.

19         7. Plaintiff’s “alternative” request for evidence sanctions is strictly prohibited. Instead,  
20 on an initial motion to compel such as Plaintiff’s, a court may only “impose a monetary sanction”  
21 against the losing party, unless that party “acted with substantial justification or that other  
22 circumstances make the imposition of the sanction unjust.” (Code Civ. Proc., § 2031.310(h).) Only  
23 “if a party fails to obey an order compelling further response” may the court impose “an evidence  
24 sanction” or such other “orders that are just.” (Code Civ. Proc., § 2031.310(i); accord, *Kravitz*,  
25 *supra*, 91 Cal.App.4th at p. 1021.)

26 **REQUEST FOR PRODUCTION NO. 8**

27 **Text of Plaintiff’s Request:**

28 “Copies of any and all DOCUMENTS, WRITINGS, and/or RECORDS that

1 RELATE TO, refer to, describe, or pertain to Jens Bryan Majano, the individual  
2 depicted in the photograph identified as Exhibit 123 at PLAINTIFF's deposition, and  
3 attached hereto as Exhibit D, including without limitation, but no limited to, City  
4 property damage reports involving said investigation/arrests; administrative  
5 investigations and interviews as a result of said investigation/arrests; hospital records  
6 or EMT/paramedic reports; documentation of discipline administered as a result of  
7 said investigation/arrests; documentation of awards or commendations received as a  
8 result of said investigation/arrests; field interview cards; informant file including VR  
(vice report); intelligence reports and/or reports documented under a silent DR.;  
court documentation involving said investigation/arrests including pitches motion  
information; Department or City government memorandums involved with said  
investigation/arrests; Department or City government emails, faxes and/or electronic  
communications involved with said investigation/arrests within YOUR custody or  
control."

9 **Text of Defendant's Response:**

10 "Defendant objects to the Request on grounds that it is overbroad, boilerplate,  
11 shotgun and seeks disclosure of law enforcement investigative records, police  
12 personnel records, confidential personal information, internal affairs investigations,  
13 confidential medical information and highly sensitive criminal offender records in  
14 violation of Penal Code §§ 832.7(a), 841.5 and 964; Government Code §§ 6254(f),  
15 6255 and 13300 et seq., Evidence Code §§ 1040 and 1043, and the constitutional  
16 privacy rights of Majano, officers involved in his arrest and others. Further, Plaintiff  
17 has asserted the Fifth Amendment in response to questions about the arrest of this  
18 individual and refused to provide any testimony about it. Plaintiff's contention that  
19 information regarding the arrest is privileged must be recognized in connection with  
20 his own request for such information. *Hartbrodt v. Burke* (1996) 42 Cal.App.4th 168,  
174-75; *Fremont Indemnity v. Superior Court* (1982) 137 Cal.App.3d 554, 560.  
Further, Defendant objects because it is informed and believes that records regarding  
the arrest of this individual are the subject of a U.S. Department of Justice  
investigation and production of these documents to Plaintiff would interfere with that  
investigation and obstruct justice. Moreover, Plaintiff testified the he was not  
involved in Mr. Majano's arrest, thus the documents sought are not reasonably  
calculated to lead to information relevant to the subject matter of this litigation.  
Defendant further responds that the Request is entirely duplicative of Request No.  
7."

21 **Plaintiff's Reasons for Compelling Production:**

22 After having introduced the booking photographs of the nine individuals as exhibits during  
23 Karagiosian's deposition, and having asked Karagiosian several questions about each individual,  
24 Defendant should not be allowed to now stand behind a claim of privacy. A party may not use a  
25 discovery privilege as a sword and a shield. A party is prohibited from introducing evidence at trial  
26 if the evidence was withheld during discovery. *Dwyer v. Crocker National Bank* (1987) 194  
27 Cal.App.3d 1418, 1432; *A&M Records Inc. v. Heilman* (1977) 75 Cal.App.3d 554, 566; *In re*  
28 *Marriage of Hoffmeister* (1984) 161 Cal.App.3d 1163, 1171.

Thus, Defendant should either be ordered to produce the documents, or it should be

1 precluded from offering any evidence during trial, or in any summary judgment motion, regarding  
2 the individuals about which Defendant questioned Karagiosian during his deposition.

3 **Defendant's Reasons for Opposing Compelled Production:**

4 These reasons are summarized below, and are set forth at greater length in connection with  
5 Request No. 1, above, which is essentially identical to this Request and all others.

6 1. Plaintiff does not even address, let alone satisfy, the threshold requirement that his  
7 motion "set forth specific facts showing good cause justifying the discovery sought by the demand."  
8 (Code Civ. Proc., § 2031.310(b)(1).) It was Plaintiff's affirmative burden "to provide evidence from  
9 which [this Court] may determine" that the requested discovery "... either is itself admissible in  
10 evidence or appears reasonably calculated to lead to the discovery of admissible evidence."  
11 (*Calcor, supra*, 53 Cal.App.4th at p. 223; see Code Civ. Proc., § 2017.010.) Plaintiff denied being  
12 involved in taking Majano into custody or knowing about use of force against him (Cischke Decl.,  
13 Exh. A, pp. 437:3-439:3.) Plaintiff's deposition answers show that he has ***no factual basis*** to  
14 conclude that any documents regarding this arrestee are either relevant or calculated to lead to  
15 admissible evidence. This is particularly true given the vast scope of documents Plaintiff seeks. His  
16 "blanket demand" hardly constitutes "'reasonable' particularity." (*Calcor, supra*, 53 Cal.App.4th at  
17 p. 222.)

18 2. "Records of complaints to, or investigations conducted by, ... any state or local  
19 police agency, ... or any investigatory or security files compiled by any other state or local agency  
20 for correctional, law enforcement, or licensing purposes," such as those Plaintiff seeks herein, are  
21 ***exempt from disclosure*** under the CPRA. (Gov. Code, § 6254(f).) Furthermore, an agency "shall  
22 justify withholding any record by demonstrating that the record in question is exempt under express  
23 provisions of this chapter or that on the facts of the particular case the public interest served by not  
24 disclosing the record clearly outweighs the public interest served by disclosure of the record." (Gov.  
25 Code, § 6255(a).) This exemption encompasses "investigations undertaken for the purpose of  
26 determining whether a violation of law may occur or has occurred. If a violation or potential  
27 violation is detected, the exemption also extends to records of investigations conducted for the  
28 purpose of uncovering information surrounding the commission of the violation and its agency."

1 (*Haynie*, *supra*, 26 Cal.4th at p. 1071.)

2 3. Disclosure of “official information” in the arrestees’ files is privileged from  
3 disclosure under Evidence Code section 1040, because such disclosure is: (a) forbidden by the  
4 specific statutes discussed herein; and (b) would be “against the public interest” in preserving the  
5 confidentiality of ongoing law enforcement investigations, as recognized in *Haynie*.

6 4. Penal Code section 841.5(a) provides that absent specific exceptions not applicable  
7 here, “no law enforcement officer or employee of a law enforcement agency shall disclose to any  
8 arrested person, or to any person who may be a defendant in a criminal action, the address or  
9 telephone number of any person who is a victim or witness in the alleged offense.” Plaintiff’s  
10 requests are broad enough to include documentation of the addresses and telephone numbers of the  
11 nine arrestees, who plainly qualify as “witness[es] in the alleged offense[s].”

12 5. Penal Code section 13300 addresses disclosure of “‘local summary criminal history  
13 information’ ... pertaining to the identification and criminal history of any person, such as name,  
14 date of birth, physical description, dates of arrests, arresting agencies and booking numbers,  
15 charges, dispositions, and similar data about the person.” (Pen. Code, § 13300(a)(1).) This statute  
16 provides that a local law enforcement agency “shall furnish local summary criminal history  
17 information to any” of 16 specified categories of entities or persons. ***Parties to civil lawsuits are not***  
18 ***among these specified categories.*** (Pen. Code, § 13300(b)(1)-(16).) This statute also refers to Labor  
19 Code section 432.7(a), which prohibits employers from asking job applicants to disclose any  
20 “information concerning an arrest or detention that did not result in conviction, or information  
21 concerning a referral to, and participation in, any pretrial or posttrial diversion program,” and  
22 prohibits such information from being sought or utilized as a factor in any employment decision.  
23 These statutes further underscore the confidential and sensitive nature of documents and other  
24 information pertaining to ongoing law enforcement investigations.

25 6. Plaintiff fails to address, let alone satisfy, the mandatory prerequisites for obtaining  
26 production of police officer personnel documents under *Pitchess* and the statutes that codify that  
27 decision (Pen. Code, § 832.7(a), and Evid. Code, § 1043 et seq.) In particular, peace officer  
28 “personnel records” (see Pen. Code, § 832.8), “or information obtained from these records, are

1 confidential and shall not be disclosed in any ... civil proceeding except by discovery pursuant to  
2 Sections 1043 and 1046 of the Evidence Code.” (Pen. Code, § 832.7(a).) A *Pitchess* motion “shall”  
3 be accompanied by, among other things, “[a]ffidavits showing good cause for the discovery or  
4 disclosure sought, setting forth the materiality thereof to the subject matter involved in the pending  
5 litigation ....” (Evid. Code, § 1043(b)(3), emphasis added.) The declaration of Plaintiff’s counsel  
6 does not purport to show that the requested discovery is “material” to the subject matter of this case.

7         7. Plaintiff’s “alternative” request for evidence sanctions is strictly prohibited. Instead,  
8 on an initial motion to compel such as Plaintiff’s, a court may only “impose a monetary sanction”  
9 against the losing party, unless that party “acted with substantial justification or that other  
10 circumstances make the imposition of the sanction unjust.” (Code Civ. Proc., § 2031.310(h).) Only  
11 “if a party fails to obey an order compelling further response” may the court impose “an evidence  
12 sanction” or such other “orders that are just.” (Code Civ. Proc., § 2031.310(i); accord, *Kravitz*,  
13 *supra*, 91 Cal.App.4th at p. 1021.)

#### 14 **REQUEST FOR PRODUCTION NO. 9**

##### 15 **Text of Plaintiff’s Request:**

16         “Copies of any and all DOCUMENTS, WRITINGS, and/or RECORDS that  
17 RELATE TO, refer to, describe, or pertain to Manuel Estrada, the individual  
18 depicted in the photograph identified as Exhibit 123 at PLAINTIFF’s deposition, and  
19 attached hereto as Exhibit E, including without limitation, but not limited to, City  
20 property damage reports involving said investigation arrests; administrative  
21 investigations and interviews as a result of said investigation/arrests; hospital records  
22 or EMT/paramedic reports; documentation of discipline administered as a result of  
23 said investigation/arrests; documentation of awards or commendations received as a  
24 result of said investigation/arrests; field interview cards; informant file including VR  
25 (vice report); intelligence reports and/or reports documented under a silent DR.;  
26 court documentation involving said investigation/arrests including pitches motion  
27 information; Department or City government memorandums involved with said  
28 investigation/arrests; Department or City government emails, faxes and/or electronic  
communications involved with said investigation/arrests within YOUR custody or  
control.”

##### 24 **Text of Defendant’s Response:**

25         “Defendant objects to the Request on grounds that it is overbroad, boilerplate,  
26 shotgun and seeks disclosure of law enforcement investigative records, police  
27 personnel records, confidential personal information, internal affairs investigations,  
28 confidential medical information and highly sensitive criminal offender records in  
violation of Penal Code §§ 832.7(a), 841.5 and 964; Government Code §§ 6254(f),  
6255 and 13300 et seq., Evidence Code §§ 1040 and 1043, and the constitutional  
privacy rights of Estrada, officers involved in his arrest and others. Further, Plaintiff  
has asserted the Fifth Amendment in response to questions about the arrest of this



individual and refused to provide any testimony about it. Plaintiff's contention that information regarding the arrest is privileged must be recognized in connection with his own request for such information. *Hartbrodt v. Burke* (1996) 42 Cal.App.4th 168, 174-75; *Fremont Indemnity v. Superior Court* (1982) 137 Cal.App.3d 554, 560. Further, Defendant objects because it is informed and believes that records regarding the arrest of this individual are the subject of a U.S. Department of Justice investigation and production of these documents to Plaintiff would interfere with that investigation and obstruct justice. Moreover, Plaintiff testified the he does not know who Mr. Estrada is and/or was not involved in his arrest, thus the documents sought are not reasonably calculated to lead to information relevant to the subject matter of this litigation."

**Plaintiff's Reasons for Compelling Production:**

After having introduced the booking photographs of the nine individuals as exhibits during Karagiosian's deposition, and having asked Karagiosian several questions about each individual, Defendant should not be allowed to now stand behind a claim of privacy. A party may not use a discovery privilege as a sword and a shield. A party is prohibited from introducing evidence at trial if the evidence was withheld during discovery. *Dwyer v. Crocker National Bank* (1987) 194 Cal.App.3d 1418, 1432; *A&M Records Inc. v. Heilman* (1977) 75 Cal.App.3d 554, 566; *In re Marriage of Hoffmeister* (1984) 161 Cal.App.3d 1163, 1171.

Thus, Defendant should either be ordered to produce the documents, or it should be precluded from offering any evidence during trial, or in any summary judgment motion, regarding the individuals about which Defendant questioned Karagiosian during his deposition.

**Defendant's Reasons for Opposing Compelled Production:**

These reasons are summarized below, and are set forth at greater length in connection with Request No. 1, above, which is essentially identical to this Request and all others.

1. Plaintiff does not even address, let alone satisfy, the threshold requirement that his motion "set forth specific facts showing good cause justifying the discovery sought by the demand." (Code Civ. Proc., § 2031.310(b)(1).) It was Plaintiff's affirmative burden "to provide evidence from which [this Court] may determine" that the requested discovery "... either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence." (*Calcor, supra*, 53 Cal.App.4th at p. 223; see Code Civ. Proc., § 2017.010.) Plaintiff denied knowing who Estrada is or who caused him injury. (Cischke Decl., Exh. A, p. 439:4-18.) Plaintiff's deposition answers show that he has *no factual basis* to conclude that any documents regarding this

1 arrestee are either relevant or calculated to lead to admissible evidence. This is particularly true  
2 given the vast scope of documents Plaintiff seeks. His “blanket demand” hardly constitutes  
3 “‘reasonable’ particularity.” (*Calcor, supra*, 53 Cal.App.4th at p. 222.)

4 2. “Records of complaints to, or investigations conducted by, ... any state or local  
5 police agency, ... or any investigatory or security files compiled by any other state or local agency  
6 for correctional, law enforcement, or licensing purposes,” such as those Plaintiff seeks herein, are  
7 ***exempt from disclosure*** under the CPRA. (Gov. Code, § 6254(f).) Furthermore, an agency “shall  
8 justify withholding any record by demonstrating that the record in question is exempt under express  
9 provisions of this chapter or that on the facts of the particular case the public interest served by not  
10 disclosing the record clearly outweighs the public interest served by disclosure of the record.” (Gov.  
11 Code, § 6255(a).) This exemption encompasses “investigations undertaken for the purpose of  
12 determining whether a violation of law may occur or has occurred. If a violation or potential  
13 violation is detected, the exemption also extends to records of investigations conducted for the  
14 purpose of uncovering information surrounding the commission of the violation and its agency.”  
15 (*Haynie, supra*, 26 Cal.4th at p. 1071.)

16 3. Disclosure of “official information” in the arrestees’ files is privileged from  
17 disclosure under Evidence Code section 1040, because such disclosure is: (a) forbidden by the  
18 specific statutes discussed herein; and (b) would be “against the public interest” in preserving the  
19 confidentiality of ongoing law enforcement investigations, as recognized in *Haynie*.

20 4. Penal Code section 841.5(a) provides that absent specific exceptions not applicable  
21 here, “no law enforcement officer or employee of a law enforcement agency shall disclose to any  
22 arrested person, or to any person who may be a defendant in a criminal action, the address or  
23 telephone number of any person who is a victim or witness in the alleged offense.” Plaintiff’s  
24 requests are broad enough to include documentation of the addresses and telephone numbers of the  
25 nine arrestees, who plainly qualify as “witness[es] in the alleged offense[s].”

26 5. Penal Code section 13300 addresses disclosure of “‘local summary criminal history  
27 information’ ... pertaining to the identification and criminal history of any person, such as name,  
28 date of birth, physical description, dates of arrests, arresting agencies and booking numbers,

1 charges, dispositions, and similar data about the person.” (Pen. Code, § 13300(a)(1).) This statute  
2 provides that a local law enforcement agency “shall furnish local summary criminal history  
3 information to any” of 16 specified categories of entities or persons. ***Parties to civil lawsuits are not***  
4 ***among these specified categories.*** (Pen. Code, § 13300(b)(1)-(16).) This statute also refers to Labor  
5 Code section 432.7(a), which prohibits employers from asking job applicants to disclose any  
6 “information concerning an arrest or detention that did not result in conviction, or information  
7 concerning a referral to, and participation in, any pretrial or posttrial diversion program,” and  
8 prohibits such information from being sought or utilized as a factor in any employment decision.  
9 These statutes further underscore the confidential and sensitive nature of documents and other  
10 information pertaining to ongoing law enforcement investigations.

11 6. Plaintiff fails to address, let alone satisfy, the mandatory prerequisites for obtaining  
12 production of police officer personnel documents under *Pitchess* and the statutes that codify that  
13 decision (Pen. Code, § 832.7(a), and Evid. Code, § 1043 et seq.) In particular, peace officer  
14 “personnel records” (see Pen. Code, § 832.8), “or information obtained from these records, are  
15 confidential and shall not be disclosed in any ... civil proceeding except by discovery pursuant to  
16 Sections 1043 and 1046 of the Evidence Code.” (Pen. Code, § 832.7(a).) A *Pitchess* motion “shall”  
17 be accompanied by, among other things, “[a]ffidavits showing good cause for the discovery or  
18 disclosure sought, setting forth the materiality thereof to the subject matter involved in the pending  
19 litigation ....” (Evid. Code, § 1043(b)(3), emphasis added.) The declaration of Plaintiff’s counsel  
20 does not purport to show that the requested discovery is “material” to the subject matter of this case.

21 7. Plaintiff’s “alternative” request for evidence sanctions is strictly prohibited. Instead,  
22 on an initial motion to compel such as Plaintiff’s, a court may only “impose a monetary sanction”  
23 against the losing party, unless that party “acted with substantial justification or that other  
24 circumstances make the imposition of the sanction unjust.” (Code Civ. Proc., § 2031.310(h).) Only  
25 “if a party fails to obey an order compelling further response” may the court impose “an evidence  
26 sanction” or such other “orders that are just.” (Code Civ. Proc., § 2031.310(i); accord, *Kravitz*,  
27 *supra*, 91 Cal.App.4th at p. 1021.)

28 ///

**REQUEST FOR PRODUCTION NO. 10**

**Text of Plaintiff's Request:**

"Copies of any and all DOCUMENTS, WRITINGS, and/or RECORDS that RELATE TO, refer to, describe, or pertain to Manuel Estrada, the individual depicted in the photograph identified as Exhibit 124 at PLAINTIFF's deposition, and attached hereto as Exhibit E, including without limitation, but not limited to, City property damage reports involving said investigation arrests; administrative investigations and interviews as a result of said investigation/arrests; hospital records or EMT/paramedic reports; documentation of discipline administered as a result of said investigation/arrests; documentation of awards or commendations received as a result of said investigation/arrests; field interview cards; informant file including VR (vice report); intelligence reports and/or reports documented under a silent DR.; court documentation involving said investigation/arrests including pitches motion information; Department or City government memorandums involved with said investigation/arrests; Department or City government emails, faxes and/or electronic communications involved with said investigation/arrests within YOUR custody or control."

**Text of Defendant's Response:**

"Defendant objects to the Request on grounds that it is overbroad, boilerplate, shotgun and seeks disclosure of law enforcement investigative records, police personnel records, confidential personal information, internal affairs investigations, confidential medical information and highly sensitive criminal offender records in violation of Penal Code §§ 832.7(a), 841.5 and 964; Government Code §§ 6254(f), 6255 and 13300 et seq., Evidence Code §§ 1040 and 1043, and the constitutional privacy rights of Estrada, officers involved in his arrest and others. Further, Plaintiff has asserted the Fifth Amendment in response to questions about the arrest of this individual and refused to provide any testimony about it. Plaintiff's contention that information regarding the arrest is privileged must be recognized in connection with his own request for such information. *Hartbrodt v. Burke* (1996) 42 Cal.App.4th 168, 174-75; *Fremont Indemnity v. Superior Court* (1982) 137 Cal.App.3d 554, 560. Further, Defendant objects because it is informed and believes that records regarding the arrest of this individual are the subject of a U.S. Department of Justice investigation and production of these documents to Plaintiff would interfere with that investigation and obstruct justice. Moreover, Plaintiff testified the he does not know who Mr. Estrada is and/or was not involved in his arrest, thus the documents sought are not reasonably calculated to lead to information relevant to the subject matter of this litigation. Defendant further objects that the Request is entirely duplicative of Request No. 9."

**Plaintiff's Reasons for Compelling Production:**

After having introduced the booking photographs of the nine individuals as exhibits during Karagiosian's deposition, and having asked Karagiosian several questions about each individual, Defendant should not be allowed to now stand behind a claim of privacy. A party may not use a discovery privilege as a sword and a shield. A party is prohibited from introducing evidence at trial if the evidence was withheld during discovery. *Dwyer v. Crocker National Bank* (1987) 194 Cal.App.3d 1418, 1432; *A&M Records Inc. v. Heilman* (1977) 75 Cal.App.3d 554, 566; *In re*

1 *Marriage of Hoffmeister* (1984) 161 Cal.App.3d 1163, 1171.

2 Thus, Defendant should either be ordered to produce the documents, or it should be  
3 precluded from offering any evidence during trial, or in any summary judgment motion, regarding  
4 the individuals about which Defendant questioned Karagiosian during his deposition.

5 **Defendant's Reasons for Opposing Compelled Production:**

6 These reasons are summarized below, and are set forth at greater length in connection with  
7 Request No. 1, above, which is essentially identical to this Request and all others.

8 1. Plaintiff does not even address, let alone satisfy, the threshold requirement that his  
9 motion "set forth specific facts showing good cause justifying the discovery sought by the demand."  
10 (Code Civ. Proc., § 2031.310(b)(1).) It was Plaintiff's affirmative burden "to provide evidence from  
11 which [this Court] may determine" that the requested discovery "... either is itself admissible in  
12 evidence or appears reasonably calculated to lead to the discovery of admissible evidence."  
13 (*Calcor*, *supra*, 53 Cal.App.4th at p. 223; see Code Civ. Proc., § 2017.010.) Plaintiff denied  
14 knowing who Estrada is or who caused him injury. (Cischke Decl., Exh. A, p. 439:4-18.) Plaintiff's  
15 deposition answers show that he has ***no factual basis*** to conclude that any documents regarding this  
16 arrestee are either relevant or calculated to lead to admissible evidence. This is particularly true  
17 given the vast scope of documents Plaintiff seeks. His "blanket demand" hardly constitutes  
18 "reasonable" particularity." (*Calcor*, *supra*, 53 Cal.App.4th at p. 222.)

19 2. "Records of complaints to, or investigations conducted by, ... any state or local  
20 police agency, ... or any investigatory or security files compiled by any other state or local agency  
21 for correctional, law enforcement, or licensing purposes," such as those Plaintiff seeks herein, are  
22 ***exempt from disclosure*** under the CPRA. (Gov. Code, § 6254(f).) Furthermore, an agency "shall  
23 justify withholding any record by demonstrating that the record in question is exempt under express  
24 provisions of this chapter or that on the facts of the particular case the public interest served by not  
25 disclosing the record clearly outweighs the public interest served by disclosure of the record." (Gov.  
26 Code, § 6255(a).) This exemption encompasses "investigations undertaken for the purpose of  
27 determining whether a violation of law may occur or has occurred. If a violation or potential  
28 violation is detected, the exemption also extends to records of investigations conducted for the

1 purpose of uncovering information surrounding the commission of the violation and its agency.”  
2 (*Haynie*, *supra*, 26 Cal.4th at p. 1071.)

3 3. Disclosure of “official information” in the arrestees’ files is privileged from  
4 disclosure under Evidence Code section 1040, because such disclosure is: (a) forbidden by the  
5 specific statutes discussed herein; and (b) would be “against the public interest” in preserving the  
6 confidentiality of ongoing law enforcement investigations, as recognized in *Haynie*.

7 4. Penal Code section 841.5(a) provides that absent specific exceptions not applicable  
8 here, “no law enforcement officer or employee of a law enforcement agency shall disclose to any  
9 arrested person, or to any person who may be a defendant in a criminal action, the address or  
10 telephone number of any person who is a victim or witness in the alleged offense.” Plaintiff’s  
11 requests are broad enough to include documentation of the addresses and telephone numbers of the  
12 nine arrestees, who plainly qualify as “witness[es] in the alleged offense[s].”

13 5. Penal Code section 13300 addresses disclosure of “‘local summary criminal history  
14 information’ ... pertaining to the identification and criminal history of any person, such as name,  
15 date of birth, physical description, dates of arrests, arresting agencies and booking numbers,  
16 charges, dispositions, and similar data about the person.” (Pen. Code, § 13300(a)(1).) This statute  
17 provides that a local law enforcement agency “shall furnish local summary criminal history  
18 information to any” of 16 specified categories of entities or persons. ***Parties to civil lawsuits are not***  
19 ***among these specified categories.*** (Pen. Code, § 13300(b)(1)-(16).) This statute also refers to Labor  
20 Code section 432.7(a), which prohibits employers from asking job applicants to disclose any  
21 “information concerning an arrest or detention that did not result in conviction, or information  
22 concerning a referral to, and participation in, any pretrial or posttrial diversion program,” and  
23 prohibits such information from being sought or utilized as a factor in any employment decision.  
24 These statutes further underscore the confidential and sensitive nature of documents and other  
25 information pertaining to ongoing law enforcement investigations.

26 6. Plaintiff fails to address, let alone satisfy, the mandatory prerequisites for obtaining  
27 production of police officer personnel documents under *Pitchess* and the statutes that codify that  
28 decision (Pen. Code, § 832.7(a), and Evid. Code, § 1043 et seq.) In particular, peace officer

1 “personnel records” (see Pen. Code, § 832.8), “or information obtained from these records, are  
2 confidential and shall not be disclosed in any ... civil proceeding except by discovery pursuant to  
3 Sections 1043 and 1046 of the Evidence Code.” (Pen. Code, § 832.7(a).) A *Pitchess* motion “shall”  
4 be accompanied by, among other things, “[a]ffidavits showing good cause for the discovery or  
5 disclosure sought, setting forth the materiality thereof to the subject matter involved in the pending  
6 litigation ....” (Evid. Code, § 1043(b)(3), emphasis added.) The declaration of Plaintiff’s counsel  
7 does not purport to show that the requested discovery is “material” to the subject matter of this case.

8 7. Plaintiff’s “alternative” request for evidence sanctions is strictly prohibited. Instead,  
9 on an initial motion to compel such as Plaintiff’s, a court may only “impose a monetary sanction”  
10 against the losing party, unless that party “acted with substantial justification or that other  
11 circumstances make the imposition of the sanction unjust.” (Code Civ. Proc., § 2031.310(h).) Only  
12 “if a party fails to obey an order compelling further response” may the court impose “an evidence  
13 sanction” or such other “orders that are just.” (Code Civ. Proc., § 2031.310(i); accord, *Kravitz*,  
14 *supra*, 91 Cal.App.4th at p. 1021.)

#### 15 **REQUEST FOR PRODUCTION NO. 11**

##### 16 **Text of Plaintiff’s Request:**

17 “Copies of any and all DOCUMENTS, WRITINGS, and/or RECORDS that  
18 RELATE TO, refer to, describe, or pertain to Jose Luis Guevara, the individual  
19 depicted in the photograph identified as Exhibit 125 at PLAINTIFF’s deposition, and  
20 attached hereto as Exhibit F, including without limitation, but no limited to,  
21 photographs, video and/or audio (booking or otherwise); reports, follow-up  
22 investigations, use of force investigation reports; tactical and training analysis  
23 reports; report(s) or recommendation(s) given by the Department Training Officer or  
24 Department personnel as a result of said investigation/arrests; notes; inmate booking  
25 folder information; booking slips; evidence log; detail (SED) daily log; detail  
26 (SED/property bureau) monthly statistical log documentation of injuries sustained by  
27 the officer(s) involved in the arrest; City property damage reports involving said  
28 investigation/arrests; administrative investigations and interviews as a result of said  
investigation/arrests; hospital records or EMT/paramedic reports; documentation of  
discipline administered as a result of said investigation/arrests; documentation of  
awards or commendations received as a result of said investigation/arrests; field  
interview cards; informant file including VR (vice report); intelligence reports and/or  
reports documented under a silent DR.; court documentation involving said  
investigation/arrests including pitches motion information; Department or City  
government memorandums involved with said investigation/arrests; Department or  
City government emails, faxes and/or electronic communications involved with said  
investigation/arrests within YOUR custody or control.”

**Text of Defendant's Response:**

"Defendant objects to the Request on grounds that it is overbroad, boilerplate, shotgun and seeks disclosure of law enforcement investigative records, police personnel records, confidential personal information, internal affairs investigations, confidential medical information and highly sensitive criminal offender records in violation of Penal Code §§ 832.7(a), 841.5 and 964; Government Code §§ 6254(f), 6255 and 13300 et seq., Evidence Code §§ 1040 and 1043, and the constitutional privacy rights of Guevara, officers involved in his arrest and others. Further, Plaintiff has asserted the Fifth Amendment in response to questions about the arrest of this individual and refused to provide any testimony about it. Plaintiff's contention that information regarding the arrest is privileged must be recognized in connection with his own request for such information. *Hartbrodt v. Burke* (1996) 42 Cal.App.4th 168, 174-75; *Fremont Indemnity v. Superior Court* (1982) 137 Cal.App.3d 554, 560. Further, Defendant objects because it is informed and believes that records regarding the arrest of this individual are the subject of a U.S. Department of Justice investigation and production of these documents to Plaintiff would interfere with that investigation and obstruct justice. Moreover, Plaintiff testified the he does not know who Mr. Guevara is and/or was not involved in his arrest, thus the documents sought are not reasonably calculated to lead to information relevant to the subject matter of this litigation."

**Plaintiff's Reasons for Compelling Production:**

After having introduced the booking photographs of the nine individuals as exhibits during Karagiosian's deposition, and having asked Karagiosian several questions about each individual, Defendant should not be allowed to now stand behind a claim of privacy. A party may not use a discovery privilege as a sword and a shield. A party is prohibited from introducing evidence at trial if the evidence was withheld during discovery. *Dwyer v. Crocker National Bank* (1987) 194 Cal.App.3d 1418, 1432; *A&M Records Inc. v. Heilman* (1977) 75 Cal.App.3d 554, 566; *In re Marriage of Hoffmeister* (1984) 161 Cal.App.3d 1163, 1171.

Thus, Defendant should either be ordered to produce the documents, or it should be precluded from offering any evidence during trial, or in any summary judgment motion, regarding the individuals about which Defendant questioned Karagiosian during his deposition.

**Defendant's Reasons for Opposing Compelled Production:**

These reasons are summarized below, and are set forth at greater length in connection with Request No. 1, above, which is essentially identical to this Request and all others.

1. Plaintiff does not even address, let alone satisfy, the threshold requirement that his motion "set forth specific facts showing good cause justifying the discovery sought by the demand." (Code Civ. Proc., § 2031.310(b)(1).) It was Plaintiff's affirmative burden "to provide evidence from



1 which [this Court] may determine” that the requested discovery “... either is itself admissible in  
2 evidence or appears reasonably calculated to lead to the discovery of admissible evidence.”  
3 (*Calcor, supra*, 53 Cal.App.4th at p. 223; see Code Civ. Proc., § 2017.010.) Plaintiff refused to  
4 provide substantive answers as to any arrestee who he recalled taking into custody, including  
5 Guevara, and instead objected based on the Fifth Amendment privilege against self-incrimination  
6 and other grounds. (Cischke Decl., Exh. A, pp. 439:19-441:14.) Plaintiff’s deposition answers show  
7 that he has ***no factual basis*** to conclude that any documents regarding this arrestee are either  
8 relevant or calculated to lead to admissible evidence. This is particularly true given the vast scope of  
9 documents Plaintiff seeks. His “blanket demand” hardly constitutes “‘reasonable’ particularity.”  
10 (*Calcor, supra*, 53 Cal.App.4th at p. 222.)

11 2. “Records of complaints to, or investigations conducted by, ... any state or local  
12 police agency, ... or any investigatory or security files compiled by any other state or local agency  
13 for correctional, law enforcement, or licensing purposes,” such as those Plaintiff seeks herein, are  
14 ***exempt from disclosure*** under the CPRA. (Gov. Code, § 6254(f).) Furthermore, an agency “shall  
15 justify withholding any record by demonstrating that the record in question is exempt under express  
16 provisions of this chapter or that on the facts of the particular case the public interest served by not  
17 disclosing the record clearly outweighs the public interest served by disclosure of the record.” (Gov.  
18 Code, § 6255(a).) This exemption encompasses “investigations undertaken for the purpose of  
19 determining whether a violation of law may occur or has occurred. If a violation or potential  
20 violation is detected, the exemption also extends to records of investigations conducted for the  
21 purpose of uncovering information surrounding the commission of the violation and its agency.”  
22 (*Haynie, supra*, 26 Cal.4th at p. 1071.)

23 3. Disclosure of “official information” in the arrestees’ files is privileged from  
24 disclosure under Evidence Code section 1040, because such disclosure is: (a) forbidden by the  
25 specific statutes discussed herein; and (b) would be “against the public interest” in preserving the  
26 confidentiality of ongoing law enforcement investigations, as recognized in *Haynie*.

27 4. Penal Code section 841.5(a) provides that absent specific exceptions not applicable  
28 here, “no law enforcement officer or employee of a law enforcement agency shall disclose to any

1 arrested person, or to any person who may be a defendant in a criminal action, the address or  
2 telephone number of any person who is a victim or witness in the alleged offense.” Plaintiff’s  
3 requests are broad enough to include documentation of the addresses and telephone numbers of the  
4 nine arrestees, who plainly qualify as “witness[es] in the alleged offense[s].”

5         5. Penal Code section 13300 addresses disclosure of “‘local summary criminal history  
6 information’ ... pertaining to the identification and criminal history of any person, such as name,  
7 date of birth, physical description, dates of arrests, arresting agencies and booking numbers,  
8 charges, dispositions, and similar data about the person.” (Pen. Code, § 13300(a)(1).) This statute  
9 provides that a local law enforcement agency “shall furnish local summary criminal history  
10 information to any” of 16 specified categories of entities or persons. ***Parties to civil lawsuits are not***  
11 ***among these specified categories.*** (Pen. Code, § 13300(b)(1)-(16).) This statute also refers to Labor  
12 Code section 432.7(a), which prohibits employers from asking job applicants to disclose any  
13 “information concerning an arrest or detention that did not result in conviction, or information  
14 concerning a referral to, and participation in, any pretrial or posttrial diversion program,” and  
15 prohibits such information from being sought or utilized as a factor in any employment decision.  
16 These statutes further underscore the confidential and sensitive nature of documents and other  
17 information pertaining to ongoing law enforcement investigations.

18         6. Plaintiff fails to address, let alone satisfy, the mandatory prerequisites for obtaining  
19 production of police officer personnel documents under *Pitchess* and the statutes that codify that  
20 decision (Pen. Code, § 832.7(a), and Evid. Code, § 1043 et seq.) In particular, peace officer  
21 “personnel records” (see Pen. Code, § 832.8), “or information obtained from these records, are  
22 confidential and shall not be disclosed in any ... civil proceeding except by discovery pursuant to  
23 Sections 1043 and 1046 of the Evidence Code.” (Pen. Code, § 832.7(a).) A *Pitchess* motion “shall”  
24 be accompanied by, among other things, “[a]ffidavits showing good cause for the discovery or  
25 disclosure sought, setting forth the materiality thereof to the subject matter involved in the pending  
26 litigation ....” (Evid. Code, § 1043(b)(3), emphasis added.) The declaration of Plaintiff’s counsel  
27 does not purport to show that the requested discovery is “material” to the subject matter of this case.

28         7. Plaintiff’s “alternative” request for evidence sanctions is strictly prohibited. Instead,

on an initial motion to compel such as Plaintiff's, a court may only "impose a monetary sanction" against the losing party, unless that party "acted with substantial justification or that other circumstances make the imposition of the sanction unjust." (Code Civ. Proc., § 2031.310(h).) Only "if a party fails to obey an order compelling further response" may the court impose "an evidence sanction" or such other "orders that are just." (Code Civ. Proc., § 2031.310(i); accord, *Kravitz*, *supra*, 91 Cal.App.4th at p. 1021.)

## **REQUEST FOR PRODUCTION NO. 12**

### **Text of Plaintiff's Request:**

"Copies of any and all DOCUMENTS, WRITINGS, and/or RECORDS that RELATE TO, refer to, describe, or pertain to Jose Luis Guevara, the individual depicted in the photograph identified as Exhibit 125 at PLAINTIFF's deposition, and attached hereto as Exhibit F, including without limitation, but not limited to, City property damage reports involving said investigation arrests; administrative investigations and interviews as a result of said investigation/arrests; hospital records or EMT/paramedic reports; documentation of discipline administered as a result of said investigation/arrests; documentation of awards or commendations received as a result of said investigation/arrests; field interview cards; informant file including VR (vice report); intelligence reports and/or reports documented under a silent DR.; court documentation involving said investigation/arrests including pitches motion information; Department or City government memorandums involved with said investigation/arrests; Department or City government emails, faxes and/or electronic communications involved with said investigation/arrests within YOUR custody or control."

### **Text of Defendant's Response:**

"Defendant objects to the Request on grounds that it is overbroad, boilerplate, shotgun and seeks disclosure of law enforcement investigative records, police personnel records, confidential personal information, internal affairs investigations, confidential medical information and highly sensitive criminal offender records in violation of Penal Code §§ 832.7(a), 841.5 and 964; Government Code §§ 6254(f), 6255 and 13300 et seq., Evidence Code §§ 1040 and 1043, and the constitutional privacy rights of Guevara, and then turn around and demand that Defendant provide all information it has about Guevara. Plaintiff cannot "have his cake and eat it too. *Hartbrodt v. Burke* (1996) 42 Cal.App.4th 168, 174-75; *Fremont Indemnity v. Superior Court* (1982) 137 Cal.App.3d 554, 560. Defendant further objects that the Request is grossly overbroad and does not describe the documents sought with reasonable particularity. Defendant further objects on grounds that the Request is entirely duplicative of Request no. 11."

### **Plaintiff's Reasons for Compelling Production:**

After having introduced the booking photographs of the nine individuals as exhibits during Karagiosian's deposition, and having asked Karagiosian several questions about each individual, Defendant should not be allowed to now stand behind a claim of privacy. A party may not use a

1 discovery privilege as a sword and a shield. A party is prohibited from introducing evidence at trial  
2 if the evidence was withheld during discovery. *Dwyer v. Crocker National Bank* (1987) 194  
3 Cal.App.3d 1418, 1432; *A&M Records Inc. v. Heilman* (1977) 75 Cal.App.3d 554, 566; *In re*  
4 *Marriage of Hoffmeister* (1984) 161 Cal.App.3d 1163, 1171.

5 Thus, Defendant should either be ordered to produce the documents, or it should be  
6 precluded from offering any evidence during trial, or in any summary judgment motion, regarding  
7 the individuals about which Defendant questioned Karagiosian during his deposition.

8 **Defendant's Reasons for Opposing Compelled Production:**

9 These reasons are summarized below, and are set forth at greater length in connection with  
10 Request No. 1, above, which is essentially identical to this Request and all others.

11 1. Plaintiff does not even address, let alone satisfy, the threshold requirement that his  
12 motion "set forth specific facts showing good cause justifying the discovery sought by the demand."  
13 (Code Civ. Proc., § 2031.310(b)(1).) It was Plaintiff's affirmative burden "to provide evidence from  
14 which [this Court] may determine" that the requested discovery "... either is itself admissible in  
15 evidence or appears reasonably calculated to lead to the discovery of admissible evidence."  
16 (*Calcor, supra*, 53 Cal.App.4th at p. 223; see Code Civ. Proc., § 2017.010.) Plaintiff refused to  
17 provide substantive answers as to any arrestee who he recalled taking into custody, including  
18 Guevara, and instead objected based on the Fifth Amendment privilege against self-incrimination  
19 and other grounds. (Cischke Decl., Exh. A, pp. 439:19-441:14.) Plaintiff's deposition answers show  
20 that he has ***no factual basis*** to conclude that any documents regarding this arrestee are either  
21 relevant or calculated to lead to admissible evidence. This is particularly true given the vast scope of  
22 documents Plaintiff seeks. His "blanket demand" hardly constitutes "'reasonable' particularity."  
23 (*Calcor, supra*, 53 Cal.App.4th at p. 222.)

24 2. "Records of complaints to, or investigations conducted by, ... any state or local  
25 police agency, ... or any investigatory or security files compiled by any other state or local agency  
26 for correctional, law enforcement, or licensing purposes," such as those Plaintiff seeks herein, are  
27 ***exempt from disclosure*** under the CPRA. (Gov. Code, § 6254(f).) Furthermore, an agency "shall  
28 justify withholding any record by demonstrating that the record in question is exempt under express

1 provisions of this chapter or that on the facts of the particular case the public interest served by not  
2 disclosing the record clearly outweighs the public interest served by disclosure of the record.” (Gov.  
3 Code, § 6255(a).) This exemption encompasses “investigations undertaken for the purpose of  
4 determining whether a violation of law may occur or has occurred. If a violation or potential  
5 violation is detected, the exemption also extends to records of investigations conducted for the  
6 purpose of uncovering information surrounding the commission of the violation and its agency.”  
7 (*Haynie*, *supra*, 26 Cal.4th at p. 1071.)

8         3. Disclosure of “official information” in the arrestees’ files is privileged from  
9 disclosure under Evidence Code section 1040, because such disclosure is: (a) forbidden by the  
10 specific statutes discussed herein; and (b) would be “against the public interest” in preserving the  
11 confidentiality of ongoing law enforcement investigations, as recognized in *Haynie*.

12         4. Penal Code section 841.5(a) provides that absent specific exceptions not applicable  
13 here, “no law enforcement officer or employee of a law enforcement agency shall disclose to any  
14 arrested person, or to any person who may be a defendant in a criminal action, the address or  
15 telephone number of any person who is a victim or witness in the alleged offense.” Plaintiff’s  
16 requests are broad enough to include documentation of the addresses and telephone numbers of the  
17 nine arrestees, who plainly qualify as “witness[es] in the alleged offense[s].”

18         5. Penal Code section 13300 addresses disclosure of “‘local summary criminal history  
19 information’ ... pertaining to the identification and criminal history of any person, such as name,  
20 date of birth, physical description, dates of arrests, arresting agencies and booking numbers,  
21 charges, dispositions, and similar data about the person.” (Pen. Code, § 13300(a)(1).) This statute  
22 provides that a local law enforcement agency “shall furnish local summary criminal history  
23 information to any” of 16 specified categories of entities or persons. ***Parties to civil lawsuits are not***  
24 ***among these specified categories.*** (Pen. Code, § 13300(b)(1)-(16).) This statute also refers to Labor  
25 Code section 432.7(a), which prohibits employers from asking job applicants to disclose any  
26 “information concerning an arrest or detention that did not result in conviction, or information  
27 concerning a referral to, and participation in, any pretrial or posttrial diversion program,” and  
28 prohibits such information from being sought or utilized as a factor in any employment decision.

1 These statutes further underscore the confidential and sensitive nature of documents and other  
2 information pertaining to ongoing law enforcement investigations.

3 6. Plaintiff fails to address, let alone satisfy, the mandatory prerequisites for obtaining  
4 production of police officer personnel documents under *Pitchess* and the statutes that codify that  
5 decision (Pen. Code, § 832.7(a), and Evid. Code, § 1043 et seq.) In particular, peace officer  
6 “personnel records” (see Pen. Code, § 832.8), “or information obtained from these records, are  
7 confidential and shall not be disclosed in any ... civil proceeding except by discovery pursuant to  
8 Sections 1043 and 1046 of the Evidence Code.” (Pen. Code, § 832.7(a).) A *Pitchess* motion “shall”  
9 be accompanied by, among other things, “[a]ffidavits showing good cause for the discovery or  
10 disclosure sought, setting forth the materiality thereof to the subject matter involved in the pending  
11 litigation ....” (Evid. Code, § 1043(b)(3), emphasis added.) The declaration of Plaintiff’s counsel  
12 does not purport to show that the requested discovery is “material” to the subject matter of this case.

13 7. Plaintiff’s “alternative” request for evidence sanctions is strictly prohibited. Instead,  
14 on an initial motion to compel such as Plaintiff’s, a court may only “impose a monetary sanction”  
15 against the losing party, unless that party “acted with substantial justification or that other  
16 circumstances make the imposition of the sanction unjust.” (Code Civ. Proc., § 2031.310(h).) Only  
17 “if a party fails to obey an order compelling further response” may the court impose “an evidence  
18 sanction” or such other “orders that are just.” (Code Civ. Proc., § 2031.310(i); accord, *Kravitz*,  
19 *supra*, 91 Cal.App.4th at p. 1021.)

## 20 **REQUEST FOR PRODUCTION NO. 13**

### 21 **Text of Plaintiff’s Request:**

22 “Copies of any and all DOCUMENTS, WRITINGS, and/or RECORDS that  
23 RELATE TO, refer to, describe, or pertain to Rene Escarsega, the individual  
24 depicted in the photograph identified as Exhibit 126 at PLAINTIFF’s deposition, and  
25 attached hereto as Exhibit G, including without limitation, but no limited to,  
26 photographs, video and/or audio (booking or otherwise); reports, follow-up  
27 investigations, use of force investigation reports; tactical and training analysis  
28 reports; report(s) or recommendation(s) given by the Department Training Officer or  
Department personnel as a result of said investigation/arrests; notes; inmate booking  
folder information; booking slips; evidence log; detail (SED) daily log; detail  
(SED/property bureau) monthly statistical log documentation of injuries sustained by  
the officer(s) involved in the arrest; City property damage reports involving said  
investigation/arrests; administrative investigations and interviews as a result of said  
investigation/arrests; hospital records or EMT/paramedic reports; documentation of  
discipline administered as a result of said investigation/arrests; documentation of

1 awards or commendations received as a result of said investigation/arrests; field  
2 interview cards; informant file including VR (vice report); intelligence reports and/or  
3 reports documented under a silent DR.; court documentation involving said  
4 investigation/arrests including pitches motion information; Department or City  
government memorandums involved with said investigation/arrests; Department or  
City government emails, faxes and/or electronic communications involved with said  
investigation/arrests within YOUR custody or control.”

5 **Text of Defendant’s Response:**

6 “Defendant objects to the Request on grounds that it is overbroad, boilerplate,  
7 shotgun and seeks disclosure of law enforcement investigative records, police  
8 personnel records, confidential personal information, internal affairs investigations,  
9 confidential medical information and highly sensitive criminal offender records in  
10 violation of Penal Code §§ 832.7(a), 841.5 and 964; Government Code §§ 6254(f),  
11 6255 and 13300 et seq., Evidence Code §§ 1040 and 1043, and the constitutional  
12 privacy rights of Escarsega, officers involved in his arrest and others. Further,  
13 Plaintiff has asserted the Fifth Amendment in response to questions about the arrest  
14 of this individual and refused to provide any testimony about it. Plaintiff’s contention  
15 that information regarding the arrest is privileged must be recognized in connection  
with his own request for such information. *Hartbrodt v. Burke* (1996) 42  
Cal.App.4th 168, 174-75; *Fremont Indemnity v. Superior Court* (1982) 137  
Cal.App.3d 554, 560. Further, Defendant objects because it is informed and believes  
that records regarding the arrest of this individual are the subject of a U.S.  
Department of Justice investigation and production of these documents to Plaintiff  
would interfere with that investigation and obstruct justice. Moreover, Plaintiff  
testified the he does not know who Mr. Escarsega is and/or was not involved in his  
arrest, thus the documents sought are not reasonably calculated to lead to information  
relevant to the subject matter of this litigation.”

16 **Plaintiff’s Reasons for Compelling Production:**

17 After having introduced the booking photographs of the nine individuals as exhibits during  
18 Karagiosian’s deposition, and having asked Karagiosian several questions about each individual,  
19 Defendant should not be allowed to now stand behind a claim of privacy. A party may not use a  
20 discovery privilege as a sword and a shield. A party is prohibited from introducing evidence at trial  
21 if the evidence was withheld during discovery. *Dwyer v. Crocker National Bank* (1987) 194  
22 Cal.App.3d 1418, 1432; *A&M Records Inc. v. Heilman* (1977) 75 Cal.App.3d 554, 566; *In re*  
23 *Marriage of Hoffmeister* (1984) 161 Cal.App.3d 1163, 1171.

24 Thus, Defendant should either be ordered to produce the documents, or it should be  
25 precluded from offering any evidence during trial, or in any summary judgment motion, regarding  
26 the individuals about which Defendant questioned Karagiosian during his deposition.

27 **Defendant’s Reasons for Opposing Compelled Production:**

28 These reasons are summarized below, and are set forth at greater length in connection with

1 Request No. 1, above, which is essentially identical to this Request and all others.

2 1. Plaintiff does not even address, let alone satisfy, the threshold requirement that his  
3 motion “set forth specific facts showing good cause justifying the discovery sought by the demand.”  
4 (Code Civ. Proc., § 2031.310(b)(1).) It was Plaintiff’s affirmative burden “to provide evidence from  
5 which [this Court] may determine” that the requested discovery “... either is itself admissible in  
6 evidence or appears reasonably calculated to lead to the discovery of admissible evidence.”  
7 (*Calcor*, *supra*, 53 Cal.App.4th at p. 223; see Code Civ. Proc., § 2017.010.) Plaintiff denied being  
8 involved in taking Escarsega into custody or knowing about use of force against him, and **refused to**  
9 **answer** whether he observed any BPD officers use force in taking him into custody. (Cischke Decl.,  
10 Exh. A, pp. 441:15-444:7.) Plaintiff’s deposition answers show that he has **no factual basis** to  
11 conclude that any documents regarding this arrestee are either relevant or calculated to lead to  
12 admissible evidence. This is particularly true given the vast scope of documents Plaintiff seeks. His  
13 “blanket demand” hardly constitutes “‘reasonable’ particularity.” (*Calcor*, *supra*, 53 Cal.App.4th at  
14 p. 222.)

15 2. “Records of complaints to, or investigations conducted by, ... any state or local  
16 police agency, ... or any investigatory or security files compiled by any other state or local agency  
17 for correctional, law enforcement, or licensing purposes,” such as those Plaintiff seeks herein, are  
18 **exempt from disclosure** under the CPRA. (Gov. Code, § 6254(f).) Furthermore, an agency “shall  
19 justify withholding any record by demonstrating that the record in question is exempt under express  
20 provisions of this chapter or that on the facts of the particular case the public interest served by not  
21 disclosing the record clearly outweighs the public interest served by disclosure of the record.” (Gov.  
22 Code, § 6255(a).) This exemption encompasses “investigations undertaken for the purpose of  
23 determining whether a violation of law may occur or has occurred. If a violation or potential  
24 violation is detected, the exemption also extends to records of investigations conducted for the  
25 purpose of uncovering information surrounding the commission of the violation and its agency.”  
26 (*Haynie*, *supra*, 26 Cal.4th at p. 1071.)

27 3. Disclosure of “official information” in the arrestees’ files is privileged from  
28 disclosure under Evidence Code section 1040, because such disclosure is: (a) forbidden by the



1 specific statutes discussed herein; and (b) would be “against the public interest” in preserving the  
2 confidentiality of ongoing law enforcement investigations, as recognized in *Haynie*.

3 4. Penal Code section 841.5(a) provides that absent specific exceptions not applicable  
4 here, “no law enforcement officer or employee of a law enforcement agency shall disclose to any  
5 arrested person, or to any person who may be a defendant in a criminal action, the address or  
6 telephone number of any person who is a victim or witness in the alleged offense.” Plaintiff’s  
7 requests are broad enough to include documentation of the addresses and telephone numbers of the  
8 nine arrestees, who plainly qualify as “witness[es] in the alleged offense[s].”

9 5. Penal Code section 13300 addresses disclosure of “‘local summary criminal history  
10 information’ ... pertaining to the identification and criminal history of any person, such as name,  
11 date of birth, physical description, dates of arrests, arresting agencies and booking numbers,  
12 charges, dispositions, and similar data about the person.” (Pen. Code, § 13300(a)(1).) This statute  
13 provides that a local law enforcement agency “shall furnish local summary criminal history  
14 information to any” of 16 specified categories of entities or persons. ***Parties to civil lawsuits are not***  
15 ***among these specified categories.*** (Pen. Code, § 13300(b)(1)-(16).) This statute also refers to Labor  
16 Code section 432.7(a), which prohibits employers from asking job applicants to disclose any  
17 “information concerning an arrest or detention that did not result in conviction, or information  
18 concerning a referral to, and participation in, any pretrial or posttrial diversion program,” and  
19 prohibits such information from being sought or utilized as a factor in any employment decision.  
20 These statutes further underscore the confidential and sensitive nature of documents and other  
21 information pertaining to ongoing law enforcement investigations.

22 6. Plaintiff fails to address, let alone satisfy, the mandatory prerequisites for obtaining  
23 production of police officer personnel documents under *Pitchess* and the statutes that codify that  
24 decision (Pen. Code, § 832.7(a), and Evid. Code, § 1043 et seq.) In particular, peace officer  
25 “personnel records” (see Pen. Code, § 832.8), “or information obtained from these records, are  
26 confidential and shall not be disclosed in any ... civil proceeding except by discovery pursuant to  
27 Sections 1043 and 1046 of the Evidence Code.” (Pen. Code, § 832.7(a).) A *Pitchess* motion “shall”  
28 be accompanied by, among other things, “[a]ffidavits showing good cause for the discovery or

disclosure sought, setting forth the materiality thereof to the subject matter involved in the pending litigation ....” (Evid. Code, § 1043(b)(3), emphasis added.) The declaration of Plaintiff’s counsel does not purport to show that the requested discovery is “material” to the subject matter of this case.

7. Plaintiff’s “alternative” request for evidence sanctions is strictly prohibited. Instead, on an initial motion to compel such as Plaintiff’s, a court may only “impose a monetary sanction” against the losing party, unless that party “acted with substantial justification or that other circumstances make the imposition of the sanction unjust.” (Code Civ. Proc., § 2031.310(h).) Only “if a party fails to obey an order compelling further response” may the court impose “an evidence sanction” or such other “orders that are just.” (Code Civ. Proc., § 2031.310(i); accord, *Kravitz, supra*, 91 Cal.App.4th at p. 1021.)

#### **REQUEST FOR PRODUCTION NO. 14**

##### **Text of Plaintiff’s Request:**

“Copies of any and all DOCUMENTS, WRITINGS, and/or RECORDS that RELATE TO, refer to, describe, or pertain to Rene Escarsega, the individual depicted in the photograph identified as Exhibit 126 at PLAINTIFF’s deposition, and attached hereto as Exhibit G, including without limitation, but not limited to, City property damage reports involving said investigation arrests; administrative investigations and interviews as a result of said investigation/arrests; hospital records or EMT/paramedic reports; documentation of discipline administered as a result of said investigation/arrests; documentation of awards or commendations received as a result of said investigation/arrests; field interview cards; informant file including VR (vice report); intelligence reports and/or reports documented under a silent DR.; court documentation involving said investigation/arrests including pitches motion information; Department or City government memorandums involved with said investigation/arrests; Department or City government emails, faxes and/or electronic communications involved with said investigation/arrests within YOUR custody or control.”

##### **Text of Defendant’s Response:**

“Defendant objects to the Request on grounds that it is overbroad, boilerplate, shotgun and seeks disclosure of law enforcement investigative records, police personnel records, confidential personal information, internal affairs investigations, confidential medical information and highly sensitive criminal offender records in violation of Penal Code §§ 832.7(a), 841.5 and 964; Government Code §§ 6254(f), 6255 and 13300 et seq., Evidence Code §§ 1040 and 1043, and the constitutional privacy rights of Escarsega, officers involved in his arrest and others. Further, Plaintiff has asserted the Fifth Amendment in response to questions about the arrest of this individual and refused to provide any testimony about it. Plaintiff’s contention that information regarding the arrest is privileged must be recognized in connection with his own request for such information. *Hartbrodt v. Burke* (1996) 42 Cal.App.4th 168, 174-75; *Fremont Indemnity v. Superior Court* (1982) 137 Cal.App.3d 554, 560. Further, Defendant objects because it is informed and believes that records regarding the arrest of this individual are the subject of a U.S.

1 Department of Justice investigation and production of these documents to Plaintiff  
2 would interfere with that investigation and obstruct justice. Moreover, Plaintiff  
3 testified the he does not know who Mr. Escarsega is and/or was not involved in his  
4 arrest, thus the documents sought are not reasonably calculated to lead to information  
5 relevant to the subject matter of this litigation. Defendant further object that the  
6 Request is entirely duplicative of Request no. 13.”

7 **Plaintiff’s Reasons for Compelling Production:**

8 After having introduced the booking photographs of the nine individuals as exhibits during  
9 Karagiosian’s deposition, and having asked Karagiosian several questions about each individual,  
10 Defendant should not be allowed to now stand behind a claim of privacy. A party may not use a  
11 discovery privilege as a sword and a shield. A party is prohibited from introducing evidence at trial  
12 if the evidence was withheld during discovery. *Dwyer v. Crocker National Bank* (1987) 194  
13 Cal.App.3d 1418, 1432; *A&M Records Inc. v. Heilman* (1977) 75 Cal.App.3d 554, 566; *In re*  
14 *Marriage of Hoffmeister* (1984) 161 Cal.App.3d 1163, 1171.

15 Thus, Defendant should either be ordered to produce the documents, or it should be  
16 precluded from offering any evidence during trial, or in any summary judgment motion, regarding  
17 the individuals about which Defendant questioned Karagiosian during his deposition.

18 **Defendant’s Reasons for Opposing Compelled Production:**

19 These reasons are summarized below, and are set forth at greater length in connection with  
20 Request No. 1, above, which is essentially identical to this Request and all others.

21 1. Plaintiff does not even address, let alone satisfy, the threshold requirement that his  
22 motion “set forth specific facts showing good cause justifying the discovery sought by the demand.”  
23 (Code Civ. Proc., § 2031.310(b)(1).) It was Plaintiff’s affirmative burden “to provide evidence from  
24 which [this Court] may determine” that the requested discovery “... either is itself admissible in  
25 evidence or appears reasonably calculated to lead to the discovery of admissible evidence.”  
26 (*Calcor, supra*, 53 Cal.App.4th at p. 223; see Code Civ. Proc., § 2017.010.) Plaintiff denied being  
27 involved in taking Escarsega into custody or knowing about use of force against him, and ***refused to***  
28 ***answer*** whether he observed any BPD officers use force in taking him into custody. (Cischke Decl.,  
Exh. A, pp. 441:15-444:7.) Plaintiff’s deposition answers show that he has ***no factual basis*** to  
conclude that any documents regarding this arrestee are either relevant or calculated to lead to

1 admissible evidence. This is particularly true given the vast scope of documents Plaintiff seeks. His  
2 “blanket demand” hardly constitutes “‘reasonable’ particularity.” (*Calcor, supra*, 53 Cal.App.4th at  
3 p. 222.)

4 2. “Records of complaints to, or investigations conducted by, ... any state or local  
5 police agency, ... or any investigatory or security files compiled by any other state or local agency  
6 for correctional, law enforcement, or licensing purposes,” such as those Plaintiff seeks herein, are  
7 ***exempt from disclosure*** under the CPRA. (Gov. Code, § 6254(f).) Furthermore, an agency “shall  
8 justify withholding any record by demonstrating that the record in question is exempt under express  
9 provisions of this chapter or that on the facts of the particular case the public interest served by not  
10 disclosing the record clearly outweighs the public interest served by disclosure of the record.” (Gov.  
11 Code, § 6255(a).) This exemption encompasses “investigations undertaken for the purpose of  
12 determining whether a violation of law may occur or has occurred. If a violation or potential  
13 violation is detected, the exemption also extends to records of investigations conducted for the  
14 purpose of uncovering information surrounding the commission of the violation and its agency.”  
15 (*Haynie, supra*, 26 Cal.4th at p. 1071.)

16 3. Disclosure of “official information” in the arrestees’ files is privileged from  
17 disclosure under Evidence Code section 1040, because such disclosure is: (a) forbidden by the  
18 specific statutes discussed herein; and (b) would be “against the public interest” in preserving the  
19 confidentiality of ongoing law enforcement investigations, as recognized in *Haynie*.

20 4. Penal Code section 841.5(a) provides that absent specific exceptions not applicable  
21 here, “no law enforcement officer or employee of a law enforcement agency shall disclose to any  
22 arrested person, or to any person who may be a defendant in a criminal action, the address or  
23 telephone number of any person who is a victim or witness in the alleged offense.” Plaintiff’s  
24 requests are broad enough to include documentation of the addresses and telephone numbers of the  
25 nine arrestees, who plainly qualify as “witness[es] in the alleged offense[s].”

26 5. Penal Code section 13300 addresses disclosure of “‘local summary criminal history  
27 information’ ... pertaining to the identification and criminal history of any person, such as name,  
28 date of birth, physical description, dates of arrests, arresting agencies and booking numbers,

1 charges, dispositions, and similar data about the person.” (Pen. Code, § 13300(a)(1).) This statute  
2 provides that a local law enforcement agency “shall furnish local summary criminal history  
3 information to any” of 16 specified categories of entities or persons. ***Parties to civil lawsuits are not***  
4 ***among these specified categories.*** (Pen. Code, § 13300(b)(1)-(16).) This statute also refers to Labor  
5 Code section 432.7(a), which prohibits employers from asking job applicants to disclose any  
6 “information concerning an arrest or detention that did not result in conviction, or information  
7 concerning a referral to, and participation in, any pretrial or posttrial diversion program,” and  
8 prohibits such information from being sought or utilized as a factor in any employment decision.  
9 These statutes further underscore the confidential and sensitive nature of documents and other  
10 information pertaining to ongoing law enforcement investigations.

11         6. Plaintiff fails to address, let alone satisfy, the mandatory prerequisites for obtaining  
12 production of police officer personnel documents under *Pitchess* and the statutes that codify that  
13 decision (Pen. Code, § 832.7(a), and Evid. Code, § 1043 et seq.) In particular, peace officer  
14 “personnel records” (see Pen. Code, § 832.8), “or information obtained from these records, are  
15 confidential and shall not be disclosed in any ... civil proceeding except by discovery pursuant to  
16 Sections 1043 and 1046 of the Evidence Code.” (Pen. Code, § 832.7(a).) A *Pitchess* motion “shall”  
17 be accompanied by, among other things, “[a]ffidavits showing good cause for the discovery or  
18 disclosure sought, setting forth the materiality thereof to the subject matter involved in the pending  
19 litigation ....” (Evid. Code, § 1043(b)(3), emphasis added.) The declaration of Plaintiff’s counsel  
20 does not purport to show that the requested discovery is “material” to the subject matter of this case.

21         7. Plaintiff’s “alternative” request for evidence sanctions is strictly prohibited. Instead,  
22 on an initial motion to compel such as Plaintiff’s, a court may only “impose a monetary sanction”  
23 against the losing party, unless that party “acted with substantial justification or that other  
24 circumstances make the imposition of the sanction unjust.” (Code Civ. Proc., § 2031.310(h).) Only  
25 “if a party fails to obey an order compelling further response” may the court impose “an evidence  
26 sanction” or such other “orders that are just.” (Code Civ. Proc., § 2031.310(i); accord, *Kravitz*,  
27 *supra*, 91 Cal.App.4th at p. 1021.)

28 ///

**REQUEST FOR PRODUCTION NO. 15**

**Text of Plaintiff's Request:**

"Copies of any and all DOCUMENTS, WRITINGS, and/or RECORDS that RELATE TO, refer to, describe, or pertain to Ray Govea, the individual depicted in the photograph identified as Exhibit 127 at PLAINTIFF's deposition, and attached hereto as Exhibit H, including without limitation, but no limited to, photographs, video and/or audio (booking or otherwise); reports, follow-up investigations, use of force investigation reports; tactical and training analysis reports; report(s) or recommendation(s) given by the Department Training Officer or Department personnel as a result of said investigation/arrests; notes; inmate booking folder information; booking slips; evidence log; detail (SED) daily log; detail (SED/property bureau) monthly statistical log documentation of injuries sustained by the officer(s) involved in the arrest; City property damage reports involving said investigation/arrests; administrative investigations and interviews as a result of said investigation/arrests; hospital records or EMT/paramedic reports; documentation of discipline administered as a result of said investigation/arrests; documentation of awards or commendations received as a result of said investigation/arrests; field interview cards; informant file including VR (vice report); intelligence reports and/or reports documented under a silent DR.; court documentation involving said investigation/arrests including pitches motion information; Department or City government memorandums involved with said investigation/arrests; Department or City government emails, faxes and/or electronic communications involved with said investigation/arrests within YOUR custody or control."

**Text of Defendant's Response:**

"Defendant objects to the Request on grounds that it is overbroad, boilerplate, shotgun and seeks disclosure of law enforcement investigative records, police personnel records, confidential personal information, internal affairs investigations, confidential medical information and highly sensitive criminal offender records in violation of Penal Code §§ 832.7(a), 841.5 and 964; Government Code §§ 6254(f), 6255 and 13300 et seq., Evidence Code §§ 1040 and 1043, and the constitutional privacy rights of Govea, officers involved in his arrest and others. Further, Plaintiff has asserted the Fifth Amendment in response to questions about the arrest of this individual and refused to provide any testimony about it. Plaintiff's contention that information regarding the arrest is privileged must be recognized in connection with his own request for such information. *Hartbrodt v. Burke* (1996) 42 Cal.App.4th 168, 174-75; *Fremont Indemnity v. Superior Court* (1982) 137 Cal.App.3d 554, 560. Further, Defendant objects because it is informed and believes that records regarding the arrest of this individual are the subject of a U.S. Department of Justice investigation and production of these documents to Plaintiff would interfere with that investigation and obstruct justice. Moreover, Plaintiff testified the he does not know who Mr. Govea is and/or was not involved in his arrest, thus the documents sought are not reasonably calculated to lead to information relevant to the subject matter of this litigation."

**Plaintiff's Reasons for Compelling Production:**

After having introduced the booking photographs of the nine individuals as exhibits during Karagiosian's deposition, and having asked Karagiosian several questions about each individual, Defendant should not be allowed to now stand behind a claim of privacy. A party may not use a

1 discovery privilege as a sword and a shield. A party is prohibited from introducing evidence at trial  
2 if the evidence was withheld during discovery. *Dwyer v. Crocker National Bank* (1987) 194  
3 Cal.App.3d 1418, 1432; *A&M Records Inc. v. Heilman* (1977) 75 Cal.App.3d 554, 566; *In re*  
4 *Marriage of Hoffmeister* (1984) 161 Cal.App.3d 1163, 1171.

5 Thus, Defendant should either be ordered to produce the documents, or it should be  
6 precluded from offering any evidence during trial, or in any summary judgment motion, regarding  
7 the individuals about which Defendant questioned Karagiosian during his deposition.

8 **Defendant's Reasons for Opposing Compelled Production:**

9 These reasons are summarized below, and are set forth at greater length in connection with  
10 Request No. 1, above, which is essentially identical to this Request and all others.

11 1. Plaintiff does not even address, let alone satisfy, the threshold requirement that his  
12 motion "set forth specific facts showing good cause justifying the discovery sought by the demand."  
13 (Code Civ. Proc., § 2031.310(b)(1).) It was Plaintiff's affirmative burden "to provide evidence from  
14 which [this Court] may determine" that the requested discovery "... either is itself admissible in  
15 evidence or appears reasonably calculated to lead to the discovery of admissible evidence."  
16 (*Calcor, supra*, 53 Cal.App.4th at p. 223; see Code Civ. Proc., § 2017.010.) Plaintiff denied  
17 knowing who Govea is or who caused him injury. (Cischke Decl., Exh. A, pp. 444:8-445:10.)  
18 Plaintiff's deposition answers show that he has ***no factual basis*** to conclude that any documents  
19 regarding this arrestee are either relevant or calculated to lead to admissible evidence. This is  
20 particularly true given the vast scope of documents Plaintiff seeks. His "blanket demand" hardly  
21 constitutes "'reasonable' particularity." (*Calcor, supra*, 53 Cal.App.4th at p. 222.)

22 2. "Records of complaints to, or investigations conducted by, ... any state or local  
23 police agency, ... or any investigatory or security files compiled by any other state or local agency  
24 for correctional, law enforcement, or licensing purposes," such as those Plaintiff seeks herein, are  
25 ***exempt from disclosure*** under the CPRA. (Gov. Code, § 6254(f).) Furthermore, an agency "shall  
26 justify withholding any record by demonstrating that the record in question is exempt under express  
27 provisions of this chapter or that on the facts of the particular case the public interest served by not  
28 disclosing the record clearly outweighs the public interest served by disclosure of the record." (Gov.

1 Code, § 6255(a).) This exemption encompasses “investigations undertaken for the purpose of  
2 determining whether a violation of law may occur or has occurred. If a violation or potential  
3 violation is detected, the exemption also extends to records of investigations conducted for the  
4 purpose of uncovering information surrounding the commission of the violation and its agency.”  
5 (*Haynie*, *supra*, 26 Cal.4th at p. 1071.)

6 3. Disclosure of “official information” in the arrestees’ files is privileged from  
7 disclosure under Evidence Code section 1040, because such disclosure is: (a) forbidden by the  
8 specific statutes discussed herein; and (b) would be “against the public interest” in preserving the  
9 confidentiality of ongoing law enforcement investigations, as recognized in *Haynie*.

10 4. Penal Code section 841.5(a) provides that absent specific exceptions not applicable  
11 here, “no law enforcement officer or employee of a law enforcement agency shall disclose to any  
12 arrested person, or to any person who may be a defendant in a criminal action, the address or  
13 telephone number of any person who is a victim or witness in the alleged offense.” Plaintiff’s  
14 requests are broad enough to include documentation of the addresses and telephone numbers of the  
15 nine arrestees, who plainly qualify as “witness[es] in the alleged offense[s].”

16 5. Penal Code section 13300 addresses disclosure of “‘local summary criminal history  
17 information’ ... pertaining to the identification and criminal history of any person, such as name,  
18 date of birth, physical description, dates of arrests, arresting agencies and booking numbers,  
19 charges, dispositions, and similar data about the person.” (Pen. Code, § 13300(a)(1).) This statute  
20 provides that a local law enforcement agency “shall furnish local summary criminal history  
21 information to any” of 16 specified categories of entities or persons. ***Parties to civil lawsuits are not***  
22 ***among these specified categories.*** (Pen. Code, § 13300(b)(1)-(16).) This statute also refers to Labor  
23 Code section 432.7(a), which prohibits employers from asking job applicants to disclose any  
24 “information concerning an arrest or detention that did not result in conviction, or information  
25 concerning a referral to, and participation in, any pretrial or posttrial diversion program,” and  
26 prohibits such information from being sought or utilized as a factor in any employment decision.  
27 These statutes further underscore the confidential and sensitive nature of documents and other  
28 information pertaining to ongoing law enforcement investigations.



6. Plaintiff fails to address, let alone satisfy, the mandatory prerequisites for obtaining production of police officer personnel documents under *Pitchess* and the statutes that codify that decision (Pen. Code, § 832.7(a), and Evid. Code, § 1043 et seq.) In particular, peace officer “personnel records” (see Pen. Code, § 832.8), “or information obtained from these records, are confidential and shall not be disclosed in any ... civil proceeding except by discovery pursuant to Sections 1043 and 1046 of the Evidence Code.” (Pen. Code, § 832.7(a).) A *Pitchess* motion “shall” be accompanied by, among other things, “[a]ffidavits showing good cause for the discovery or disclosure sought, setting forth the materiality thereof to the subject matter involved in the pending litigation ....” (Evid. Code, § 1043(b)(3), emphasis added.) The declaration of Plaintiff’s counsel does not purport to show that the requested discovery is “material” to the subject matter of this case.

7. Plaintiff’s “alternative” request for evidence sanctions is strictly prohibited. Instead, on an initial motion to compel such as Plaintiff’s, a court may only “impose a monetary sanction” against the losing party, unless that party “acted with substantial justification or that other circumstances make the imposition of the sanction unjust.” (Code Civ. Proc., § 2031.310(h).) Only “if a party fails to obey an order compelling further response” may the court impose “an evidence sanction” or such other “orders that are just.” (Code Civ. Proc., § 2031.310(i); accord, *Kravitz*, *supra*, 91 Cal.App.4th at p. 1021.)

#### **REQUEST FOR PRODUCTION NO. 16**

##### **Text of Plaintiff’s Request:**

“Copies of any and all DOCUMENTS, WRITINGS, and/or RECORDS that RELATE TO, refer to, describe, or pertain to Ray Govea, the individual depicted in the photograph identified as Exhibit 127 at PLAINTIFF’s deposition, and attached hereto as Exhibit H, including without limitation, but not limited to, City property damage reports involving said investigation arrests; administrative investigations and interviews as a result of said investigation/arrests; hospital records or EMT/paramedic reports; documentation of discipline administered as a result of said investigation/arrests; documentation of awards or commendations received as a result of said investigation/arrests; field interview cards; informant file including VR (vice report); intelligence reports and/or reports documented under a silent DR.; court documentation involving said investigation/arrests including pitches motion information; Department or City government memorandums involved with said investigation/arrests; Department or City government emails, faxes and/or electronic communications involved with said investigation/arrests within YOUR custody or control.”

**Text of Defendant's Response:**

"Defendant objects to the Request on grounds that it is overbroad, boilerplate, shotgun and seeks disclosure of law enforcement investigative records, police personnel records, confidential personal information, internal affairs investigations, confidential medical information and highly sensitive criminal offender records in violation of Penal Code §§ 832.7(a), 841.5 and 964; Government Code §§ 6254(f), 6255 and 13300 et seq., Evidence Code §§ 1040 and 1043, and the constitutional privacy rights of Govea, officers involved in his arrest and others. Further, Plaintiff has asserted the Fifth Amendment in response to questions about the arrest of this individual and refused to provide any testimony about it. Plaintiff's contention that information regarding the arrest is privileged must be recognized in connection with his own request for such information. *Hartbrodt v. Burke* (1996) 42 Cal.App.4th 168, 174-75; *Fremont Indemnity v. Superior Court* (1982) 137 Cal.App.3d 554, 560. Further, Defendant objects because it is informed and believes that records regarding the arrest of this individual are the subject of a U.S. Department of Justice investigation and production of these documents to Plaintiff would interfere with that investigation and obstruct justice. Moreover, Plaintiff testified the he does not know who Mr. Govea is and/or was not involved in his arrest, thus the documents sought are not reasonably calculated to lead to information relevant to the subject matter of this litigation. Defendant further objects that the Request is entirely duplicative of Request no. 15."

**Plaintiff's Reasons for Compelling Production:**

After having introduced the booking photographs of the nine individuals as exhibits during Karagiosian's deposition, and having asked Karagiosian several questions about each individual, Defendant should not be allowed to now stand behind a claim of privacy. A party may not use a discovery privilege as a sword and a shield. A party is prohibited from introducing evidence at trial if the evidence was withheld during discovery. *Dwyer v. Crocker National Bank* (1987) 194 Cal.App.3d 1418, 1432; *A&M Records Inc. v. Heilman* (1977) 75 Cal.App.3d 554, 566; *In re Marriage of Hoffmeister* (1984) 161 Cal.App.3d 1163, 1171.

Thus, Defendant should either be ordered to produce the documents, or it should be precluded from offering any evidence during trial, or in any summary judgment motion, regarding the individuals about which Defendant questioned Karagiosian during his deposition.

**Defendant's Reasons for Opposing Compelled Production:**

These reasons are summarized below, and are set forth at greater length in connection with Request No. 1, above, which is essentially identical to this Request and all others.

1. Plaintiff does not even address, let alone satisfy, the threshold requirement that his motion "set forth specific facts showing good cause justifying the discovery sought by the demand."

(Code Civ. Proc., § 2031.310(b)(1).) It was Plaintiff's affirmative burden "to provide evidence from which [this Court] may determine" that the requested discovery "... either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence." (*Calcor*, *supra*, 53 Cal.App.4th at p. 223; see Code Civ. Proc., § 2017.010.) Plaintiff denied knowing who Govea is or who caused him injury. (Cischke Decl., Exh. A, pp. 444:8-445:10.) Plaintiff's deposition answers show that he has ***no factual basis*** to conclude that any documents regarding this arrestee are either relevant or calculated to lead to admissible evidence. This is particularly true given the vast scope of documents Plaintiff seeks. His "blanket demand" hardly constitutes "'reasonable' particularity." (*Calcor*, *supra*, 53 Cal.App.4th at p. 222.)

2. "Records of complaints to, or investigations conducted by, ... any state or local police agency, ... or any investigatory or security files compiled by any other state or local agency for correctional, law enforcement, or licensing purposes," such as those Plaintiff seeks herein, are ***exempt from disclosure*** under the CPRA. (Gov. Code, § 6254(f).) Furthermore, an agency "shall justify withholding any record by demonstrating that the record in question is exempt under express provisions of this chapter or that on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record." (Gov. Code, § 6255(a).) This exemption encompasses "investigations undertaken for the purpose of determining whether a violation of law may occur or has occurred. If a violation or potential violation is detected, the exemption also extends to records of investigations conducted for the purpose of uncovering information surrounding the commission of the violation and its agency." (*Haynie*, *supra*, 26 Cal.4th at p. 1071.)

3. Disclosure of "official information" in the arrestees' files is privileged from disclosure under Evidence Code section 1040, because such disclosure is: (a) forbidden by the specific statutes discussed herein; and (b) would be "against the public interest" in preserving the confidentiality of ongoing law enforcement investigations, as recognized in *Haynie*.

4. Penal Code section 841.5(a) provides that absent specific exceptions not applicable here, "no law enforcement officer or employee of a law enforcement agency shall disclose to any arrested person, or to any person who may be a defendant in a criminal action, the address or

1 telephone number of any person who is a victim or witness in the alleged offense.” Plaintiff’s  
2 requests are broad enough to include documentation of the addresses and telephone numbers of the  
3 nine arrestees, who plainly qualify as “witness[es] in the alleged offense[s].”

4         5. Penal Code section 13300 addresses disclosure of “‘local summary criminal history  
5 information’ ... pertaining to the identification and criminal history of any person, such as name,  
6 date of birth, physical description, dates of arrests, arresting agencies and booking numbers,  
7 charges, dispositions, and similar data about the person.” (Pen. Code, § 13300(a)(1).) This statute  
8 provides that a local law enforcement agency “shall furnish local summary criminal history  
9 information to any” of 16 specified categories of entities or persons. ***Parties to civil lawsuits are not***  
10 ***among these specified categories.*** (Pen. Code, § 13300(b)(1)-(16).) This statute also refers to Labor  
11 Code section 432.7(a), which prohibits employers from asking job applicants to disclose any  
12 “information concerning an arrest or detention that did not result in conviction, or information  
13 concerning a referral to, and participation in, any pretrial or posttrial diversion program,” and  
14 prohibits such information from being sought or utilized as a factor in any employment decision.  
15 These statutes further underscore the confidential and sensitive nature of documents and other  
16 information pertaining to ongoing law enforcement investigations.

17         6. Plaintiff fails to address, let alone satisfy, the mandatory prerequisites for obtaining  
18 production of police officer personnel documents under *Pitchess* and the statutes that codify that  
19 decision (Pen. Code, § 832.7(a), and Evid. Code, § 1043 et seq.) In particular, peace officer  
20 “personnel records” (see Pen. Code, § 832.8), “or information obtained from these records, are  
21 confidential and shall not be disclosed in any ... civil proceeding except by discovery pursuant to  
22 Sections 1043 and 1046 of the Evidence Code.” (Pen. Code, § 832.7(a).) A *Pitchess* motion “shall”  
23 be accompanied by, among other things, “[a]ffidavits showing good cause for the discovery or  
24 disclosure sought, setting forth the materiality thereof to the subject matter involved in the pending  
25 litigation ....” (Evid. Code, § 1043(b)(3), emphasis added.) The declaration of Plaintiff’s counsel  
26 does not purport to show that the requested discovery is “material” to the subject matter of this case.

27         7. Plaintiff’s “alternative” request for evidence sanctions is strictly prohibited. Instead,  
28 on an initial motion to compel such as Plaintiff’s, a court may only “impose a monetary sanction”

1 against the losing party, unless that party "acted with substantial justification or that other  
2 circumstances make the imposition of the sanction unjust." (Code Civ. Proc., § 2031.310(h).) Only  
3 "if a party fails to obey an order compelling further response" may the court impose "an evidence  
4 sanction" or such other "orders that are just." (Code Civ. Proc., § 2031.310(i); accord, *Kravitz*,  
5 *supra*, 91 Cal.App.4th at p. 1021.)

6 **REQUEST FOR PRODUCTION NO. 17**

7 **Text of Plaintiff's Request:**

8 "Copies of any and all DOCUMENTS, WRITINGS, and/or RECORDS that  
9 RELATE TO, refer to, describe, or pertain to Jose Luis Alvarenga, the individual  
10 depicted in the photograph identified as Exhibit 128 at PLAINTIFF's deposition, and  
11 attached hereto as Exhibit I, including without limitation, but no limited to,  
12 photographs, video and/or audio (booking or otherwise); reports, follow-up  
13 investigations, use of force investigation reports; tactical and training analysis  
14 reports; report(s) or recommendation(s) given by the Department Training Officer or  
15 Department personnel as a result of said investigation/arrests; notes; inmate booking  
16 folder information; booking slips; evidence log; detail (SED) daily log; detail  
17 (SED/property bureau) monthly statistical log documentation of injuries sustained by  
18 the officer(s) involved in the arrest; City property damage reports involving said  
19 investigation/arrests; administrative investigations and interviews as a result of said  
20 investigation/arrests; hospital records or EMT/paramedic reports; documentation of  
21 discipline administered as a result of said investigation/arrests; documentation of  
22 awards or commendations received as a result of said investigation/arrests; field  
23 interview cards; informant file including VR (vice report); intelligence reports and/or  
24 reports documented under a silent DR.; court documentation involving said  
25 investigation/arrests including pitches motion information; Department or City  
26 government memorandums involved with said investigation/arrests; Department or  
27 City government emails, faxes and/or electronic communications involved with said  
28 investigation/arrests within YOUR custody or control."

19 **Text of Defendant's Response:**

20 "Defendant objects to the Request on grounds that it is overbroad, boilerplate,  
21 shotgun and seeks disclosure of law enforcement investigative records, police  
22 personnel records, confidential personal information, internal affairs investigations,  
23 confidential medical information and highly sensitive criminal offender records in  
24 violation of Penal Code §§ 832.7(a), 841.5 and 964; Government Code §§ 6254(f),  
25 6255 and 13300 et seq., Evidence Code §§ 1040 and 1043, and the constitutional  
26 privacy rights of Alvarenga, officers involved in his arrest and others. Further,  
27 Plaintiff has asserted the Fifth Amendment in response to questions about the arrest  
28 of this individual and refused to provide any testimony about it. Plaintiff's contention  
that information regarding the arrest is privileged must be recognized in connection  
with his own request for such information. *Hartbrodt v. Burke* (1996) 42  
Cal.App.4th 168, 174-75; *Fremont Indemnity v. Superior Court* (1982) 137  
Cal.App.3d 554, 560. Further, Defendant objects because it is informed and believes  
that records regarding the arrest of this individual are the subject of a U.S.  
Department of Justice investigation and production of these documents to Plaintiff  
would interfere with that investigation and obstruct justice. Moreover, Plaintiff  
testified the he does not know who Mr. Alvarenga is and/or was not involved in his  
arrest, thus the documents sought are not reasonably calculated to lead to information

relevant to the subject matter of this litigation.”

**Plaintiff’s Reasons for Compelling Production:**

After having introduced the booking photographs of the nine individuals as exhibits during Karagiosian’s deposition, and having asked Karagiosian several questions about each individual, Defendant should not be allowed to now stand behind a claim of privacy. A party may not use a discovery privilege as a sword and a shield. A party is prohibited from introducing evidence at trial if the evidence was withheld during discovery. *Dwyer v. Crocker National Bank* (1987) 194 Cal.App.3d 1418, 1432; *A&M Records Inc. v. Heilman* (1977) 75 Cal.App.3d 554, 566; *In re Marriage of Hoffmeister* (1984) 161 Cal.App.3d 1163, 1171.

Thus, Defendant should either be ordered to produce the documents, or it should be precluded from offering any evidence during trial, or in any summary judgment motion, regarding the individuals about which Defendant questioned Karagiosian during his deposition.

**Defendant’s Reasons for Opposing Compelled Production:**

These reasons are summarized below, and are set forth at greater length in connection with Request No. 1, above, which is essentially identical to this Request and all others.

1. Plaintiff does not even address, let alone satisfy, the threshold requirement that his motion “set forth specific facts showing good cause justifying the discovery sought by the demand.” (Code Civ. Proc., § 2031.310(b)(1).) It was Plaintiff’s affirmative burden “to provide evidence from which [this Court] may determine” that the requested discovery “... either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence.” (*Calcor, supra*, 53 Cal.App.4th at p. 223; see Code Civ. Proc., § 2017.010.) Plaintiff refused to provide substantive answers as to any arrestee who he recalled taking into custody, including Alvarenga, and instead objected based on the Fifth Amendment privilege against self-incrimination and other grounds. (Cischke Decl., Exh. A, pp. 445:11-448:19.) Plaintiff’s deposition answers show that he has ***no factual basis*** to conclude that any documents regarding this arrestee are either relevant or calculated to lead to admissible evidence. This is particularly true given the vast scope of documents Plaintiff seeks. His “blanket demand” hardly constitutes “‘reasonable’ particularity.” (*Calcor, supra*, 53 Cal.App.4th at p. 222.)

2. "Records of complaints to, or investigations conducted by, ... any state or local police agency, ... or any investigatory or security files compiled by any other state or local agency for correctional, law enforcement, or licensing purposes," such as those Plaintiff seeks herein, are *exempt from disclosure* under the CPRA. (Gov. Code, § 6254(f).) Furthermore, an agency "shall justify withholding any record by demonstrating that the record in question is exempt under express provisions of this chapter or that on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record." (Gov. Code, § 6255(a).) This exemption encompasses "investigations undertaken for the purpose of determining whether a violation of law may occur or has occurred. If a violation or potential violation is detected, the exemption also extends to records of investigations conducted for the purpose of uncovering information surrounding the commission of the violation and its agency." (*Haynie, supra*, 26 Cal.4th at p. 1071.)

3. Disclosure of "official information" in the arrestees' files is privileged from disclosure under Evidence Code section 1040, because such disclosure is: (a) forbidden by the specific statutes discussed herein; and (b) would be "against the public interest" in preserving the confidentiality of ongoing law enforcement investigations, as recognized in *Haynie*.

4. Penal Code section 841.5(a) provides that absent specific exceptions not applicable here, "no law enforcement officer or employee of a law enforcement agency shall disclose to any arrested person, or to any person who may be a defendant in a criminal action, the address or telephone number of any person who is a victim or witness in the alleged offense." Plaintiff's requests are broad enough to include documentation of the addresses and telephone numbers of the nine arrestees, who plainly qualify as "witness[es] in the alleged offense[s]."

5. Penal Code section 13300 addresses disclosure of "'local summary criminal history information' ... pertaining to the identification and criminal history of any person, such as name, date of birth, physical description, dates of arrests, arresting agencies and booking numbers, charges, dispositions, and similar data about the person." (Pen. Code, § 13300(a)(1).) This statute provides that a local law enforcement agency "shall furnish local summary criminal history information to any" of 16 specified categories of entities or persons. *Parties to civil lawsuits are not*

1 *among these specified categories.* (Pen. Code, § 13300(b)(1)-(16).) This statute also refers to Labor  
2 Code section 432.7(a), which prohibits employers from asking job applicants to disclose any  
3 “information concerning an arrest or detention that did not result in conviction, or information  
4 concerning a referral to, and participation in, any pretrial or posttrial diversion program,” and  
5 prohibits such information from being sought or utilized as a factor in any employment decision.  
6 These statutes further underscore the confidential and sensitive nature of documents and other  
7 information pertaining to ongoing law enforcement investigations.

8 6. Plaintiff fails to address, let alone satisfy, the mandatory prerequisites for obtaining  
9 production of police officer personnel documents under *Pitchess* and the statutes that codify that  
10 decision (Pen. Code, § 832.7(a), and Evid. Code, § 1043 et seq.) In particular, peace officer  
11 “personnel records” (see Pen. Code, § 832.8), “or information obtained from these records, are  
12 confidential and shall not be disclosed in any ... civil proceeding except by discovery pursuant to  
13 Sections 1043 and 1046 of the Evidence Code.” (Pen. Code, § 832.7(a).) A *Pitchess* motion “shall”  
14 be accompanied by, among other things, “[a]ffidavits showing good cause for the discovery or  
15 disclosure sought, setting forth the materiality thereof to the subject matter involved in the pending  
16 litigation ....” (Evid. Code, § 1043(b)(3), emphasis added.) The declaration of Plaintiff’s counsel  
17 does not purport to show that the requested discovery is “material” to the subject matter of this case.

18 7. Plaintiff’s “alternative” request for evidence sanctions is strictly prohibited. Instead,  
19 on an initial motion to compel such as Plaintiff’s, a court may only “impose a monetary sanction”  
20 against the losing party, unless that party “acted with substantial justification or that other  
21 circumstances make the imposition of the sanction unjust.” (Code Civ. Proc., § 2031.310(h).) Only  
22 “if a party fails to obey an order compelling further response” may the court impose “an evidence  
23 sanction” or such other “orders that are just.” (Code Civ. Proc., § 2031.310(i); accord, *Kravitz*,  
24 *supra*, 91 Cal.App.4th at p. 1021.)

## 25 **REQUEST FOR PRODUCTION NO. 18**

### 26 **Text of Plaintiff’s Request:**

27 “Copies of any and all DOCUMENTS, WRITINGS, and/or RECORDS that  
28 RELATE TO, refer to, describe, or pertain to Jose Luis Alvarenga, the individual  
depicted in the photograph identified as Exhibit 128 at PLAINTIFF’s deposition, and  
attached hereto as Exhibit I, including without limitation, but not limited to, City



property damage reports involving said investigation arrests; administrative investigations and interviews as a result of said investigation/arrests; hospital records or EMT/paramedic reports; documentation of discipline administered as a result of said investigation/arrests; documentation of awards or commendations received as a result of said investigation/arrests; field interview cards; informant file including VR (vice report); intelligence reports and/or reports documented under a silent DR.; court documentation involving said investigation/arrests including pitches motion information; Department or City government memorandums involved with said investigation/arrests; Department or City government emails, faxes and/or electronic communications involved with said investigation/arrests within YOUR custody or control.”

**Text of Defendant’s Response:**

“Defendant objects to the Request on grounds that it is overbroad, boilerplate, shotgun and seeks disclosure of law enforcement investigative records, police personnel records, confidential personal information, internal affairs investigations, confidential medical information and highly sensitive criminal offender records in violation of Penal Code §§ 832.7(a), 841.5 and 964; Government Code §§ 6254(f), 6255 and 13300 et seq., Evidence Code §§ 1040 and 1043, and the constitutional privacy rights of Alvarenga, officers involved in his arrest and others. Further, Plaintiff has asserted the Fifth Amendment in response to questions about the arrest of this individual and refused to provide any testimony about it. Plaintiff’s contention that information regarding the arrest is privileged must be recognized in connection with his own request for such information. *Hartbrodt v. Burke* (1996) 42 Cal.App.4th 168, 174-75; *Fremont Indemnity v. Superior Court* (1982) 137 Cal.App.3d 554, 560. Further, Defendant objects because it is informed and believes that records regarding the arrest of this individual are the subject of a U.S. Department of Justice investigation and production of these documents to Plaintiff would interfere with that investigation and obstruct justice. Moreover, Plaintiff testified the he does not know who Mr. Alvarenga is and/or was not involved in his arrest, thus the documents sought are not reasonably calculated to lead to information relevant to the subject matter of this litigation. Defendant further objects on grounds that the Request is entirely duplicative of Request no. 17.”

**Plaintiff’s Reasons for Compelling Production:**

After having introduced the booking photographs of the nine individuals as exhibits during Karagiosian’s deposition, and having asked Karagiosian several questions about each individual, Defendant should not be allowed to now stand behind a claim of privacy. A party may not use a discovery privilege as a sword and a shield. A party is prohibited from introducing evidence at trial if the evidence was withheld during discovery. *Dwyer v. Crocker National Bank* (1987) 194 Cal.App.3d 1418, 1432; *A&M Records Inc. v. Heilman* (1977) 75 Cal.App.3d 554, 566; *In re Marriage of Hoffmeister* (1984) 161 Cal.App.3d 1163, 1171.

Thus, Defendant should either be ordered to produce the documents, or it should be precluded from offering any evidence during trial, or in any summary judgment motion, regarding

1 the individuals about which Defendant questioned Karagiosian during his deposition.

2 **Defendant's Reasons for Opposing Compelled Production:**

3 These reasons are summarized below, and are set forth at greater length in connection with  
4 Request No. 1, above, which is essentially identical to this Request and all others.

5 1. Plaintiff does not even address, let alone satisfy, the threshold requirement that his  
6 motion "set forth specific facts showing good cause justifying the discovery sought by the demand."  
7 (Code Civ. Proc., § 2031.310(b)(1).) It was Plaintiff's affirmative burden "to provide evidence from  
8 which [this Court] may determine" that the requested discovery "... either is itself admissible in  
9 evidence or appears reasonably calculated to lead to the discovery of admissible evidence."  
10 (*Calcor*, *supra*, 53 Cal.App.4th at p. 223; see Code Civ. Proc., § 2017.010.) Plaintiff refused to  
11 provide substantive answers as to any arrestee who he recalled taking into custody, including  
12 Alvarenga, and instead objected based on the Fifth Amendment privilege against self-incrimination  
13 and other grounds. (Cischke Decl., Exh. A, pp. 445:11-448:19.) Plaintiff's deposition answers show  
14 that he has ***no factual basis*** to conclude that any documents regarding this arrestee are either  
15 relevant or calculated to lead to admissible evidence. This is particularly true given the vast scope of  
16 documents Plaintiff seeks. His "blanket demand" hardly constitutes "'reasonable' particularity."  
17 (*Calcor*, *supra*, 53 Cal.App.4th at p. 222.)

18 2. "Records of complaints to, or investigations conducted by, ... any state or local  
19 police agency, ... or any investigatory or security files compiled by any other state or local agency  
20 for correctional, law enforcement, or licensing purposes," such as those Plaintiff seeks herein, are  
21 ***exempt from disclosure*** under the CPRA. (Gov. Code, § 6254(f).) Furthermore, an agency "shall  
22 justify withholding any record by demonstrating that the record in question is exempt under express  
23 provisions of this chapter or that on the facts of the particular case the public interest served by not  
24 disclosing the record clearly outweighs the public interest served by disclosure of the record." (Gov.  
25 Code, § 6255(a).) This exemption encompasses "investigations undertaken for the purpose of  
26 determining whether a violation of law may occur or has occurred. If a violation or potential  
27 violation is detected, the exemption also extends to records of investigations conducted for the  
28 purpose of uncovering information surrounding the commission of the violation and its agency."

1 (*Haynie*, *supra*, 26 Cal.4th at p. 1071.)

2 3. Disclosure of “official information” in the arrestees’ files is privileged from  
3 disclosure under Evidence Code section 1040, because such disclosure is: (a) forbidden by the  
4 specific statutes discussed herein; and (b) would be “against the public interest” in preserving the  
5 confidentiality of ongoing law enforcement investigations, as recognized in *Haynie*.

6 4. Penal Code section 841.5(a) provides that absent specific exceptions not applicable  
7 here, “no law enforcement officer or employee of a law enforcement agency shall disclose to any  
8 arrested person, or to any person who may be a defendant in a criminal action, the address or  
9 telephone number of any person who is a victim or witness in the alleged offense.” Plaintiff’s  
10 requests are broad enough to include documentation of the addresses and telephone numbers of the  
11 nine arrestees, who plainly qualify as “witness[es] in the alleged offense[s].”

12 5. Penal Code section 13300 addresses disclosure of “‘local summary criminal history  
13 information’ ... pertaining to the identification and criminal history of any person, such as name,  
14 date of birth, physical description, dates of arrests, arresting agencies and booking numbers,  
15 charges, dispositions, and similar data about the person.” (Pen. Code, § 13300(a)(1).) This statute  
16 provides that a local law enforcement agency “shall furnish local summary criminal history  
17 information to any” of 16 specified categories of entities or persons. ***Parties to civil lawsuits are not***  
18 ***among these specified categories.*** (Pen. Code, § 13300(b)(1)-(16).) This statute also refers to Labor  
19 Code section 432.7(a), which prohibits employers from asking job applicants to disclose any  
20 “information concerning an arrest or detention that did not result in conviction, or information  
21 concerning a referral to, and participation in, any pretrial or posttrial diversion program,” and  
22 prohibits such information from being sought or utilized as a factor in any employment decision.  
23 These statutes further underscore the confidential and sensitive nature of documents and other  
24 information pertaining to ongoing law enforcement investigations.

25 6. Plaintiff fails to address, let alone satisfy, the mandatory prerequisites for obtaining  
26 production of police officer personnel documents under *Pitchess* and the statutes that codify that  
27 decision (Pen. Code, § 832.7(a), and Evid. Code, § 1043 et seq.) In particular, peace officer  
28 “personnel records” (see Pen. Code, § 832.8), “or information obtained from these records, are

1 confidential and shall not be disclosed in any ... civil proceeding except by discovery pursuant to  
2 Sections 1043 and 1046 of the Evidence Code.” (Pen. Code, § 832.7(a).) A *Pitchess* motion “shall”  
3 be accompanied by, among other things, “[a]ffidavits showing good cause for the discovery or  
4 disclosure sought, setting forth the materiality thereof to the subject matter involved in the pending  
5 litigation ....” (Evid. Code, § 1043(b)(3), emphasis added.) The declaration of Plaintiff’s counsel  
6 does not purport to show that the requested discovery is “material” to the subject matter of this case.

7         7. Plaintiff’s “alternative” request for evidence sanctions is strictly prohibited. Instead,  
8 on an initial motion to compel such as Plaintiff’s, a court may only “impose a monetary sanction”  
9 against the losing party, unless that party “acted with substantial justification or that other  
10 circumstances make the imposition of the sanction unjust.” (Code Civ. Proc., § 2031.310(h).) Only  
11 “if a party fails to obey an order compelling further response” may the court impose “an evidence  
12 sanction” or such other “orders that are just.” (Code Civ. Proc., § 2031.310(i); accord, *Kravitz*,  
13 *supra*, 91 Cal.App.4th at p. 1021.)

14 DATED: February 26, 2010

BALLARD, ROSENBERG, GOLPER & SAVITT LLP

15 By:   
16 \_\_\_\_\_

John J. Maner

17 Attorneys for Defendant CITY OF BURBANK,  
18 including the Police Department of the City of Burbank  
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1  
2 **PROOF OF SERVICE**

3 **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

4 I am employed in the County of Los Angeles, State of California. I am over the age of  
5 eighteen years and not a party to the within action; my business address is 500 North Brand  
6 Boulevard, 20th Floor, Glendale, California 91203-9946.

7 On February 26, 2010, I served the following document(s) described as **DEFENDANT'S  
8 SEPARATE STATEMENT IN OPPOSITION TO PLAINTIFF STEVE KARAGIOSIAN'S  
9 MOTION TO COMPEL FURTHER RESPONSES TO DOCUMENT REQUESTS [ETC.]** on  
10 the interested parties in this action by placing true copies thereof enclosed in sealed envelopes  
11 addressed as follows:

12 Solomon E. Gresen, Esq.  
13 Steven V. Rheuban, Esq.  
14 Law Offices of Rheuban & Gresen  
15 15910 Ventura Boulevard, Suite 1610  
16 Encino, CA 91436  
17 Tel: (818) 815.2727 • Fax: (818) 815-2737  
18 [seg@rglawyers.com](mailto:seg@rglawyers.com)

19 ☒ **BY ELECTRONIC MAIL TRANSMISSION:** By electronic mail transmission from  
20 kthomson@brgslaw.com on February 26, 2010, by transmitting a PDF format copy of such  
21 document(s) to each such person at the e-mail address listed below their address(es). The  
22 document(s) was/were transmitted by electronic transmission and such transmission was  
23 reported as complete and without error.

24 ☐ **BY MAIL:** I am "readily familiar" with Ballard Rosenberg Golper & Savitt's practice for  
25 collecting and processing correspondence for mailing with the United States Postal Service.  
26 Under that practice, it would be deposited with the United States Postal Service that same  
27 day in the ordinary course of business. Such envelope(s) were placed for collection and  
28 mailing with postage thereon fully prepaid at Glendale, California, on that same day  
following ordinary business practices.

☐ **BY FACSIMILE:** At or before 5:00 p.m., I caused said document(s) to be transmitted by  
facsimile. The telephone number of the sending facsimile machine was (818) 506-4827.  
The name(s) and facsimile machine telephone number(s) of the person(s) served are set forth  
in the service list. The document was transmitted by facsimile transmission, and the sending  
facsimile machine properly issued a transmission report confirming that the transmission  
was complete and without error.

☒ **BY FEDEX:** I deposited such document(s) in a box or other facility regularly maintained  
by FedEx, or delivered such document(s) to a courier or driver authorized by FedEx to  
receive documents, in an envelope or package designated by FedEx with delivery fees paid  
or provided for, addressed to the person(s) being served.

I declare under penalty of perjury under the laws of the State of California that the foregoing  
is true and correct. Executed on February 26, 2010, at Glendale, California.

27   
28 Karen J. Thomson